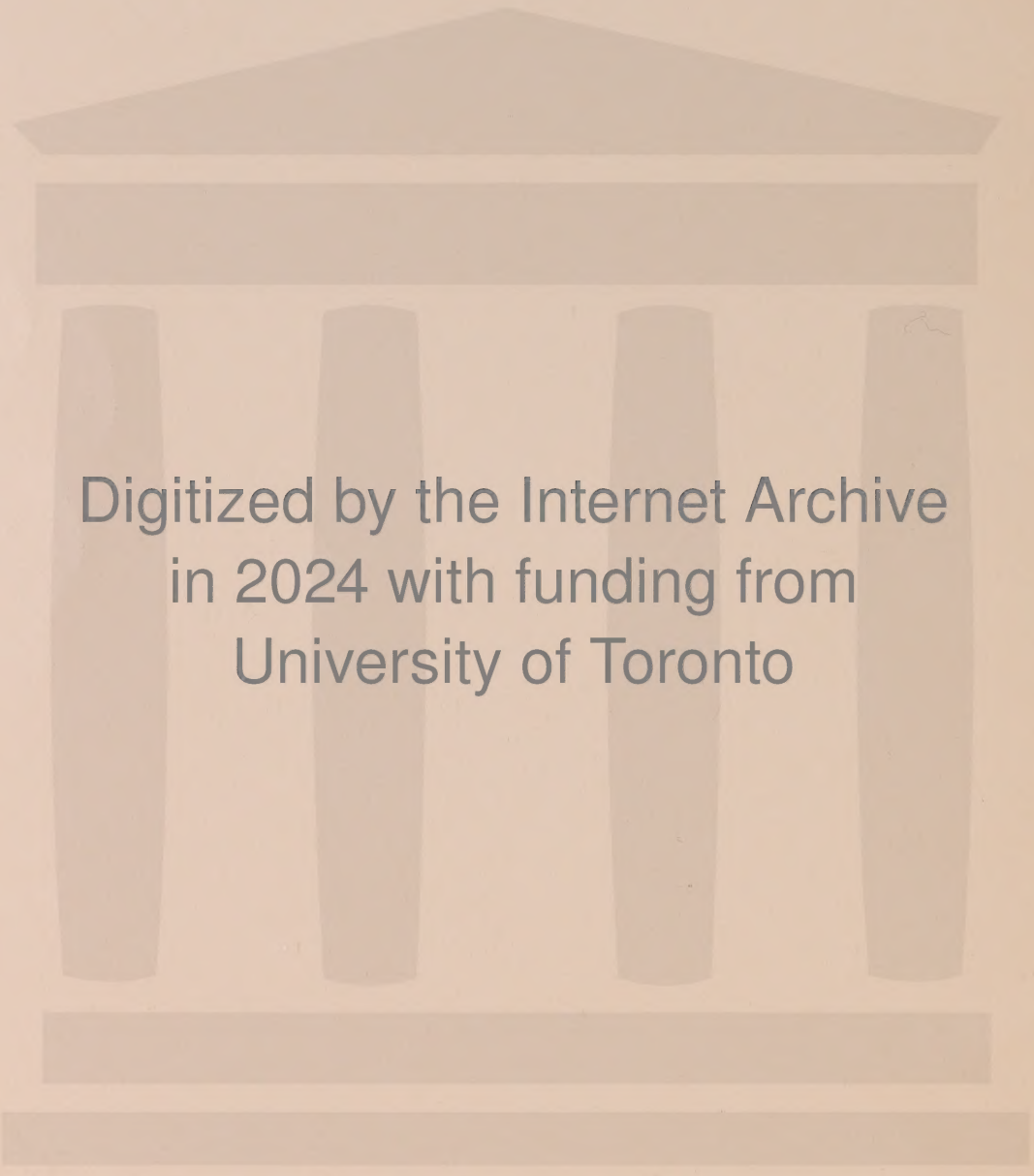
SUMMARIES OF ORDERS AND REASONS

BY THE RENT REVIEW HEARINGS BOARD TO SEPTEMBER, 1988

Ontario

Rent Review Hearings Board

Commission de révision des loyers



In the matter of 256 Highfield Road, Toronto
Appeal No. C-0001-87, December 21, 1987

WHOLE BUILDING REVIEW APPEAL

Extension of time; application for WBR; whether administrator's decision is an Order which finally disposes of the application; section 73 - retroactive whole building review

Extension of time granted for filing of applications for whole building review. Board found that the decision of the administrator had the legal effect of settling the matter between the parties by "disposing of the application". Tenants filed rebate applications within days of the expiry of time for filing retroactive whole building review by landlord. Landlord advised of provisions for retroactive whole building review and immediately applied for extension of time. Board referred to **Wardell v Mohr** (1986) 13 C.P.C. (2d) 79 and **Laurin v Foldesi** (1979), 23 O.R. (2d) 321 and concluded that the landlord failed to satisfy the criteria set out therein in having failed to act diligently and had shown no reasonable cause for the delay. However, relying on the case of **Re Wolek v Herzog** (1984) 46 O.R. 513, the Board concluded that on the real merits and justice of the case, the application should not be defeated on a technicality and the landlord should be allowed an opportunity to participate in the process by justifying the rents rather than being locked into a lower rent base in perpetuity.

In the matter of 36 Sydenham Street, Toronto
Appeal No. C-0002-87, December 21, 1987

WHOLE BUILDING REVIEW APPEAL

Extension of time; application for WBR; whether administrator's decision is an Order which finally disposes of the application; section 73 - retroactive whole building review

See reasons in the matter of 256 Highfield Road, Toronto, Ontario, Appeal No. C-0001-87, December 21, 1987.

In the matter of Unit #9, 319 Homewood Avenue, Sudbury
Appeal No. N-0004-87, February 2, 1988

RENT REBATE APPEAL

New rental unit created - major renovation

The landlord appealed a rebate decision of the Minister on the

grounds that the difference between rent charged and maximum rent had not been considered in light of renovations that had occurred. The landlord alleged that he had created a one-bedroom apartment out of a bachelor unit.

The Board considered the application of section 128 of the **Residential Tenancies Act** with respect to major renovations occurring prior to January 1, 1987.

Board found that a new unit was created within the meaning of section 128 and the related Guideline RR-9 of the Residential Tenancy Commission.

Accordingly the Minister's Order was set aside and the maximum rent recalculated.

In the matter of 47 Phalen Crescent, Scarborough
Appeal No. C-0020-87, February 11, 1988

RENT REBATE APPEAL

Failure to consider costs

The landlord appealed a rebate order arguing that the refinancing costs, depreciation costs of chattels in rental agreement and the increased operating costs had not been considered. The Board noted that for those to be considered there must first be a section 74 application in existence. Neither the manner of calculating the rebate nor the amount determined, was challenged. The Order of the Minister was affirmed.

In the matter of Apartment 12, 675 Wonderland Road, London
Appeal No. SW-0018-87, February 19, 1988

RENT REBATE APPEAL

Adjournment refused; Rent Registry Application; Hearsay Evidence

Application originally commenced under **Residential Tenancies Act** and continued over under **Residential Rent Regulation Act, 1986.** Tenant's agent and lawyer for agent requested adjournment. Tenant was aware of progress of proceedings but failed to advise agent. Board refused request for adjournment. Board considered rental information filed in 1976 by a previous landlord pursuant to previous rent review legislation. Board relied on previous rent list despite arguments that evidence such as this should not be considered and is not subject to cross-examination and that

the Board should not exclusively rely on hearsay evidence. Board determined maximum rent and ordered rebate even though application pending before Rent Registry.

In the matter of Unit #1, 137 Berczy Street, Barrie
Appeal No. C-0024-87, February 22, 1988

RENT REBATE APPEAL

Services - hydro increases

The landlord disputed a rebate order. He claimed that the tenant had been unable to obtain a hydro account and therefore the landlord agreed to pay for hydro provided the tenant would pay his rent plus the hydro increases. Prior to the tenant moving in the rent did not include hydro. The Board accepted the submissions of the landlord.

The Board decided that the average hydro cost had been $30.00 per month and that this amount should be added to the basic unit rent from September 1, 1982. Excess rent recalculated accordingly and the Board recalculated the maximum rent chargeable on the basis of one increase for each 12 months taking into account the actual dates of increase.

In the matter of 2377 Chilver Road, Windsor
Appeal No. SW-0016-87, March 2, 1988

RENT REBATE APPEAL

Documents filed out of time; credibility

The landlord appealed the Minister's Order granting a rebate of $748.68 to the tenant.

Documents filed out of time by the landlord were accepted pursuant to subsection 102(3) of the **Residential Rent Regulation Act, 1986** as were all documents of the tenant.

Credibility of the parties as to past rental payments was considered.

The Minister's Order was affirmed.

In the matter of Unit #5, 209 Montcalm Avenue, Sudbury
Appeal No. N-0023-87, March 2, 1988

RENT REBATE APPEAL

Renovations not considered

Landlord claimed unreasonably low rents, major renovations not reflected in rent. Renovation started at very end of 1986 and mainly undertaken in January 1987. Landlord did not apply for Whole Building Review. Landlord only entitled to statutory increases in determining appeal.

In the matter of Main Floor Apartment, 5 Balsam Avenue, Kirkland Lake, Ontario
Appeal No. N-0017-87, March 7, 1988

RENT REBATE APPEAL

Renovations - section 99 Residential Rent Regulation Act, 1986

The landlord disputed a rebate order on the grounds that renovations made by them justified a rent comparable to those paid by higher priced rental units. Renovation costs were considerable in 1981 and 1982 and additional costs incurred in July and August, 1986.

The Administrator had disallowed consideration of the expenses because the criteria for setting a new rent under section 128 of the **Residential Tenancies Act** had not been met. The landlord asked for consideration with respect to section 99 of the **Residential Rent Regulation Act, 1986** and sections 23 and 24 of Ont. Reg. 440/87.

Upon appeal Board found that rents charged had exceeded those permitted by the legislation. A consideration of the Regulations and legislation referred to indicated that the landlord made no argument nor did he come within the criteria set out in section 23 of Regulation 440/87.

The Minister's Order was affirmed.

In the matter of Apartment 2, 266 Cheapside Street, London
Appeal No. SW-0026-87, March 10, 1988

RENT REBATE APPEAL

Economic hardship disallowed

The landlord appealed from a Minister's rebate order.

The landlord, as a new owner, had increased the rents because of "economic hardship" but had not applied for a whole building review nor given a written Notice of Rent Increase.

The Minister's Order was affirmed.

In the matter of 162C Jansen Avenue, Kitchener, Ontario
Appeal No. SW-0019-87, March 30, 1988

WHOLE BUILDING REVIEW APPEAL

Option to purchase; jurisdiction of Residential Rent Regulation Act, 1986; recent order found by Rent Review Services subsequent to appeal hearing - applicability to calculations

The tenant had signed a document entitled option to purchase and made monthly payments to the landlord. The landlord argued that these payments were not rent but rather payments made under the option and therefore outside the jurisdiction of the **Act**. The Board concluded that the document in question was of no force due to failings in the document itself and the fact that the property in question had been sold to another purchaser during the purported life of the option to purchase. Furthermore, the option did not bring the tenants within the class of persons excluded from the definition of tenant, namely a co-owner or shareholder of the corporation owning the complex. With respect to the subsequently discovered Order, the Board reconvened the hearing to give the parties an opportunity to respond to the Order which had been located by Rent Review Services subsequent to the Appeal hearing and which had not been used in the initial level calculations.

In the matter of 550 Scarborough Golf Club Road, Scarborough
Appeal No. C-0027-87, April 6, 1988

WHOLE BUILDING REVIEW APPEAL

Extension of time; CRS

Extension of time granted for filing of Cost Revenue Statement pursuant to provisions of sections 19(5) and 19(6) of the **Act**. Referring to Rent Review Hearings Board decision of in the matter of 256 Highfield Road, Toronto, Ontario (Appeal No. C-0001-87 which cited **Wardell v. Mohr** (1986), 13 C.P.C. (2d) 79 (S.C.O.), the Board found that despite confusion on the part of the property managers involved, the landlord did not exercise undue delay, that there was reasonable cause to explain the delay, that the landlord may have been misled by information received from

Rent Review Services, and that there was no prejudice to the tenants in allowing the extension of time for filing.

In the matter of Units 102, 201, 301, 303, 305, 306, 403, 405, 95 Windsor Drive, Brockville
Appeals Nos. E-0008-87, E-0014-87, E-0010-87, E-0013-87, E-0015-87, E-0011-87, E-0009-87 and E-0007-87, April 18, 1988

RENT REBATE APPEALS

Separate charges, time for calculation

Number of appeals dealt with at common hearing as issues similar. Determination of air-conditioner and laundry charges; maximum rent and rent chargeable. Issue of discount of rent due to removal of service. Board found no discount rather found new lease agreement entered into in 1984 establishing services available on a separate charge basis. This agreement was entered into prior to units coming under rent review. Board considered evidence on rebate for same time frame as the Administrator who considered rebate due beyond the application date and up to date of consideration of application.

In the matter of 316 Morrish Road, Scarborough
Appeal No. C-0034-87, April 19, 1988

RENT REBATE APPEAL

Rent Registry; Act not effected by agreement between parties

Landlord had filed with Rent Registry. Rent charged on actual rent date slightly lower than 1983 ordered rent increases taken in excess of statutory amount in 1986 and 1987. Board proceeded to deal with excess increases. Landlord claims real estate fees should be charged to the tenant and that lease agreement for higher rent should be recognized. Board did not recognize cost to landlord to rent unit in determining rent. Board also found Act applicable despite agreement by parties to pay higher amount.

In the matter of 702-770 Wonderland Road, London, Ontario
Appeal No. SW-0025-87, April 19, 1988

RENT REBATE APPEAL

Receivership of landlord; holder of legal title

The legal title to the property resided in a number of different corporate entities during the period of the tenancies. Further,

one of these went into receivership and during this time, the property was managed by and payments were made to, the receiver. A new company was incorporated and took over the property when the receivership ended. The Board concluded that the landlord had remained the same throughout and that based on the merits and justice of the case, the landlord's identity had not changed despite the shifting names. The name of the landlord was amended on appeal to reflect the latest corporate entity. The issue of the landlord's involvement with the receiver in the view of the Board was not relevant to the determination made.

In the matter of Unit 7, 143 Deschamps Street, Vanier, Ontario
Appeal No. E-0025-88, April 19, 1988

RENT REBATE APPEAL

Actual notice of Notice of Appeal

Landlord failed to give copy of Notice of Appeal to tenant. Board found tenant received actual Notice under section 21(4). Issue as to whether parking space included in basic monthly rent. Board found Landlord exceeded statutory increase and ordered rebate.

In the matter of Apartment 5, 1481 Morisset Avenue, Ottawa
Appeal No. E-0037-87, May 5, 1988

RENT REBATE APPEAL

Maximum rent recalculated - extra parking charge not rent increase

The landlord appealed from an Order of the Minister rebating excess rent to the tenants.

The anniversary date of rent increase was found to be September 1, 1985 and the calculations of maximum rent and the amount of rebate were recalculated accordingly. An adjustment was also made for parking because the tenant had two parking spaces from December 1, 1982 to August 31, 1983. The extra parking charge was not found to constitute a rent increase and did not affect the rent increase date.

In the matter of 215 Markham Road, Scarborough
Appeal No. C-0022-88, May 6, 1988

WHOLE BUILDING REVIEW APPEAL

Agreement limiting issues - subsection 102(2); deterioration in maintenance and repair

Appeal by a single tenant following an application under section 74 of the **Residential Rent Regulation Act, 1986.**

The appellant and the landlord's agent made a written agreement limiting the issues under appeal to the single issue raised in the Notice of Appeal being the issue of maintenance and repair.

The evidence included recent findings as to the state of repair and relevant findings set out in a prior rent review order. The relevant period for consideration of deterioration in maintenance and repair was determined as being subsequent to a previous order.

In the matter of 821 Birchmount Road Limited, Scarborough
Appeal No. C-0039-87, May 6, 1988

WHOLE BUILDING REVIEW APPEAL

Application of O.Reg 93/87 and O.Reg 440/87; applicability of maximum rent in prior rebate order; operating cost calculations; capital expenditures as part of acquisition cost; conflict between financing costs provisions in subsection 75(b) of the Act, under O.Reg 440/87, clause 29(2)(d) and subsection 27(1); financial loss; relief of hardship

A previous order setting a lawful rent for one unit in the context of a rebate application does not mean it should be removed from any subsequent caculations with respect to revenue and expenses and the calculations based thereon. The order calculated a maximum rent for the unit and specified the earliest date it could be charged. The operating cost allowance was fixed at the lower 3% as the Board concluded there was an allowance for capital expenditures being washers and dryers. The administrator was in error in placing the costs to purchase these items in the acquisition costs on the basis that dealing with them separately from acquisition costs would result in an allowance which was less than one percent of gross potential rent. The words in subsection 75(b) of the **Act**, "which the landlord has experienced or will experience" are not in conflict with clause 29(2)(d) of

O.Reg. 440/87 which recalculates financing based on deemed amortization periods and interest rates. As in financial loss, costs are notional rather than experienced. It is consistent with the intention of the legislature that costs be notional rather than actual. The assumed mortgage was restructured based on section 29 of the Regulations rather than section 27, as the former was more specific than the latter in these particular circumstances. Furthermore, the restructured financing was limited by the 85% of acquisition cost limitation found in section 26 of O.Reg. 440/87. Financial loss was limited by subsection 79(3) of the **Act** to 5% as it arose out of an increase in financing costs on acquisition. The Board denied the relief of hardship allowance on the basis that the landlord had not requested it in the application and further, it was not necessary to further "cushion" the landlord to absorb fluctuations in costs.

In the matter of 3660 Dominion Road, Ridgeway
Appeal No. SW-0020-88, May 10, 1988

WHOLE BUILDING REVIEW APPEAL

Actual notice of Notice of Appeal

Application commenced under section 126 of the **Residential Tenancies Act** and continued over under current legislation. Copy of Notice of Appeal not given though Board made finding of actual notice pursuant to subsection 21(4). Prior to this application the rent had not been raised for a number of years. Landlord had raised rents prior to bringing Whole Building Review applications. Board affirmed Order of Administrator which, prior to adding on justified increase, had adjusted rent to lawful base.

In the matter of Apartment 610, 180 Bruyere Street, Ottawa
Appeal No. E-0026-88, May 11, 1988

RENT REBATE APPEAL

Summons of rent review administrator, validity of Notices of Rent Increase

Board refused request to summons Rent Review Administrator to appear at hearing. Board found that it had jurisdiction to

determine validity of Notices of Increase under **Residential Tenancies Act** for purposes of rent rebate calculation. Maximum

and lawful rent reviewed in detail as part of Board's determinations.

In the matter of Apartment 211, 1739 Victoria Park Avenue, Scarborough
Appeal No. C-0003-87, May 16, 1988

RENT REBATE APPEAL

Appeal Hearing followed Pre-hearing Conference. At hearing earliest effective date of increase changed to reflect annual anniversary date of increase.

In the matter of Unit 7, 157 Pim Street, Sault Ste. Marie, Ontario
Appeal No. N-0001-88, May 16, 1988

RENT REBATE APPEAL

Prior Orders: res judicata-issue estoppel

Residential Tenancy Commission had issued Order setting maximum rent as of June 1, 1986. Rent Review Administrator issued Order subsequent to that making findings concerning validity of Notices of Increase prior to the rent accepted in an Order of the Residential Tenancy Commission. The Board ruled on the basis of **Re Mascan Corp.** and **Ponzi et al.** that the Residential Tenancy Commission Order should be accepted and not gone behind in determining lawful rent and rebate.

In the matter of Apartment No. 3, 1455 Morisset Avenue, Ottawa
Appeal No. E-0016-88, May 26th, 1988

RENT REBATE APPEAL

Copy of application not given to other party; consideration of extension of time for giving copy of application; consideration of actual notice; landlord liable for rebate only during a period of ownership; landlord's claim of offsetting rent due against rebate as a result of faulty notice of termination; landlord unable to levy cost for N.S.F. cheque.

Tenant brought rent rebate application but never gave a copy to the landlord. Reference was made to subsection 21(4) of the **Act** which provides for actual notice but requires that actual notice be given within the time frame for the giving of the application - which is ten days. Board considered that the landlord and its

agents had adequate opportunity to know the issues and respond. Board extended the time for giving a copy in order that the landlord could be considered to have actual notice within that time frame. Board recognized that landlord was only liable for rebate during the period of ownership and that other claims could be asserted against other landlords if applicable. The Board stated that the landlord's claim to offset rent due as a result of claimed faulty notice of termination was not recognized as it is a matter that should be resolved before the Courts. The Board did not recognize a landlord's claim of cost for N.S.F. cheques as the **Act** prohibits such charges.

The Minister's Order was set aside and the Board substituted its own Order.

In the matter of Apartment 317, 67 Cartier Road, London, Ontario
Appeal No. SW-0028-87, May 27th, 1988

RENT REBATE APPEAL

Application commenced under Residential Tenancies Act and continued over; landlord filed with Rent Registry, section 66 consideration; discussion of identity of landlord; tenant with burden of proof not appearing at hearing.

Tenant brought application under **Residential Tenancies Act** and elected over under new legislation. Landlord had filed with Rent Registry and therefore section 66 would not allow ordering a rebate prior to August 1, 1985. This had an effect on the ordering of rebate. The Board reviewed the previous corporate ownership and management of residential complex. Tenant appeared at initial hearing but not at reconvening of hearing. Board proceeded on basis of filed evidence and affirmed Administrator's order. Board noted that tenant had burden of proof.

The Minister's Order was affirmed.

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In the matter of 2520 Barton Street East, Hamilton, Ontario
Appeal No. SW-0040-87, May 30th, 1988

WHOLE BUILDING REVIEW APPEAL

Extension of time; application for WBR; retroactive application filed out of time; request for extension of time.

Landlord filed retroactive application three days late and requested an extension of time. Administrator issued letter refusing to extend time. Landlord appealed to the Board. The

Board heard evidence concerning the circumstances surrounding the application date. The Board considered In the matter of 256 Highfield Road, Toronto, Appeal No. C-0001-87, December 21, 1987 and In the matter of 36 Sydenham Street, Toronto, Appeal No. C-0002-87, December 21, 1987 which were reviewed in Keeping Scor No. 1. The Board reviewed the case of **Wardell** v. **Mohr** (1986), 13 C.P.C. (2d) 79 and the criteria set out therein and applied them to the facts at hand. The Board also considered the case of **Wolek** v. **Herzog** (1984), 46 O.R. (2d) 513. The Board decided that the extension of time should be granted and that the application be heard on the merits.

The Minister's Order was set aside and the Board substituted its own Order.

In the matter of 45 Barlake Avenue, Hamilton, Ontario
Appeal No. SW-0041-87, May 30th, 1988

WHOLE BUILDING REVIEW APPEAL

Extension of time; application for WBR; retroactive application filed out of time; request for extension of time.

See Reasons in In the matter of 2520 Barton Street East, Hamilton, Appeal No. SW-0040-88, May 30th, 1988.

The Minister's Order was set aside and the Board substituted its own Order.

In the matter of 42 Rose Street, Barrie, Ontario
Appeal No. C-0031-88, May 30th, 1988

WHOLE BUILDING REVIEW APPEAL

Landlord's own labour re capital expenditures; disallowance of capital expenditures; extraordinary operating costs disallowed.

The Board heard evidence as to the number of hours expended by the landlord on a capital expenditure and recognized a reduced number of hours. The Board reviewed a number of capital expenditures claimed and considered allocation of these expenditures between use for the residential complex and personal use. A claimed capital expenditure was considered to be part of operating expenses. Extraordinary operating costs disallowed in that landlord was making a claim for one item only of the general maintenance category and the regulations require that all of the maintenance components be addressed before an extraordinary operating costs can be allowed, which the landlord had not done.

The Minister's Order was set aside and the Board substituted its own Order.

In the matter of 183 Tancred Street, Sault Ste. Marie
Appeal No. N 0018-88, May 31st, 1988

RENT REBATE APPEAL

Repairs and renovations; agreement to increase rent beyond amount permitted by Act

Landlord appealed rent rebate order arguing that he had carried out repairs and renovations to the building at the request of the tenant and further that they had agreed to increase the rent to reflect the work done. The Board held that the **Act** applied notwithstanding any agreement to the contrary; that no proper notice of rent increase had been given; that the rent increases were in excess of guideline and further that more than one increase was taken in a twelve month period.

The Minister's Order was affirmed.

In the matter of Lower Apartment, 50 Fourth Avenue, Ottawa
Appeal No. E-0038-88, June 6th, 1988

RENT REBATE APPEAL

Change in parking spaces under new tenancy; discussion of section 97; Increases must be 12 months apart for post-75 building in 1986; Different copy of application filed with Ministry than served on landlord

Tenancy in post-75 rental unit. On new tenancy two parking spots used as opposed to one in previous tenancy. Discussion of lack of details in lease document. The Board reviewed the provisions dealing with adding and deleting parking charges under section 97 of the **Act.** The Board adopted the principle that the parking charge in question will be the average for similar services in residential complex. The Board found that only one increase in a 12-month period was applicable to post-75 building during the time frame of August 1, 1985 to December 31, 1986. Though the tenant applicant had filed a more detailed copy of the application with Rent Review Services than the one they gave to the landlord, the Board found that the essential terms of the claim had been communicated to the landlord and therefore no action was required.

The Minister's Order was set aside and the Board substituted its own Order.

In the matter of Apartment 3, 305 Levis Street, Vanier
Appeal No. E-0041-88, June 6th, 1988

RENT REBATE APPEAL

Maximum rent recalculated; unusual parking arrangement

A finding was made as to the parking charge in circumstances where parking was only provided during winter months.

Maximum rent was calculated with no allowance made for the period between April 1986 and September 1987, after a finding that no increase could have been taken during this period because of a prior increase actually taken.

The Minister's Order was set aside and the Board substituted its own Order.

In the matter of 404 Huron Street, Toronto
Appeal No. C-0073-88, June 8th, 1988

WHOLE BUILDING REVIEW APPEAL

Copy of Notice of Appeal not given to tenant, a capital expenditure claim disallowed; timing of capital expenditure

Landlord did not give copy of Notice of Appeal to tenant, but Board found at hearing that tenant was prepared to proceed. A capital expenditure claim had been disallowed based on timing of completion.

The Minister's Order was affirmed.

In the matter of 142 James Street, Prescott, Ontario
Appeal No. E-0035-87, June 8th, 1988

RENT REBATE APPEAL

Landlord undertook repairs and renovations from March to July, 1986; consideration of creation of new units; section 70 - twelve months between increases; unsolicited post-hearing evidence not considered.

Landlord claimed that work undertaken during period of March through July, 1986 was substantial and warranted charging a higher rent. Landlord also claimed property appraised at a certain value which warranted a certain rent. The Board found that the work undertaken was not extensive enough to alter the character of the rental unit to the extent that a new rental unit was created. The Board recognized that an increase could not be taken in July, 1986 in that the twelve month limitation on frequency of increase in section 70 prohibited it. Board made its findings based on evidence of previous tenant's payment. After the hearing the Board received unsolicited evidence which was not considered.

The Minister's Order was set aside and the Board substituted its own Order.

In the matter of 55 Trayborn Drive, Richmond Hill
Appeal No. C-0010-88, June 8th, 1988

RENT REBATE APPEAL

Landlord (appellant) not appearing; hearing proceeding

The landlord appealed an Order made under section 95 on the basis that the calculations and figures on the application were not correct. The landlord failed to appear. The Board proceeded with the hearing and affirmed the Minister's Order upon being satisfied that the calculations were correct.

The Minister's Order was affirmed.

In the matter of 18 Kenrae Road, Toronto
Appeal No. C-0123-88, June 10th, 1988

WHOLE BUILDING REVIEW APPEAL

Base rents; ordering increase greater than that requested in application.

Landlord claimed that the base rents had been incorrectly dated and that the wrong rents were filed with the Rent Registry. Specifically, they claimed that the 1984 base rents were filed as opposed to those at the actual rent base of July 1985. The Board heard evidence and submissions concerning the base rents and recognized that the landlord had filed the 1984 base rents in error. The Board recognized and updated base rents and applied the justified increase to those rents. The Board also recognized

in its award that the increase to some units were greater than that requested in the application. The Board made note of section 90 in the **Act** and discussed its application.

The Minister's Order was set aside and the Board substituted its own Order.

In the matter of 84 Blackfriars Street - Upper, London, Ontario
Appeal No. SW-0021-87, June 14th, 1988

RENT REBATE

Giving of notice of appeal; rent reduction for superintendent work; adjournment to seek legal counsel

The landlord appealed excess rent ordered, arguing that the rent increase was justified due to an additional tenant moving in and that the previous rent had been reduced in exchange for superintendent duties. The tenants submitted oral and documentary evidence indicating the previous rent and that no superintendent duties had been carried out by the previous tenants. The Board accommodated the landlord's request for several adjournments both to allow time to adequately prepare and to seek legal counsel.

The Minister's Order was affirmed.

In the matter of 43 Athlone Road, Tilbury, Ontario
Appeal No. SW-0029-88, June 17th, 1988

RENT REBATE

Giving of copy of application; proof of actual rent

The time for giving of the application was extended to the date the landlord received actual notice as he had shown no prejudice by the failure to receive the copy. The tenant submitted receipts for rent and lease agreements in evidence. The prior and present landlords gave oral evidence. The Board was of the view that the oral evidence was sufficiently contradictory as was the documentary evidence submitted by the landlord, that it accepted the evidence of the tenant and made a finding of excess rent due.

The Minister's Order was rescinded and the Board substituted its own Order.

In the matter of 1290 Bridletowne Circle, Unit 34, Scarborough
Appeal No. C-0046-88, June 17th, 1988

RENT REBATE APPEAL

Tenant with burden of proof not appearing at hearing; landlord claimed that evidence of previous tenant's payment was partial payment; landlord's claim of costs and expenses.

Tenant applicant with burden of proof on appeal did not attend hearing, however, Board proceeded on the basis of material filed. Landlords claimed that payment of rent by previous tenant represented only partial payment. Board did not find in landlord's favour as no evidence tendered on that issue. Landlord claimed additional costs which justified higher rent. Board found that landlord could have sought recognition of those costs under a whole building review application but did not. The Board ordered repayment of excess rent paid.

The Minister's Order was set aside and the Board substituted its own Order.

In the matter of Apartment #2, 369 - 10th Street, Owen Sound, Ontario
Appeal No. SW-0146-88, June 22, 1988

RENT REBATE APPEAL

Tenant applicant not attending hearing; rent rebate order offset against payments of rent; landlord claimed renovation justified increase in rent.

Tenant applicant with burden of proof did not attend hearing. The Board proceeded based on material filed. Landlord believed that the tenant was going to withdraw the application before Rent Review Services, but this apparently did not take place. The landlord made renovations and claimed this justified a higher rent. The Board advised that such costs could be recognized in the rent provided that a landlord brought a whole building review application under section 74. Board noted that landlord had recently brought whole building review application.

The Minister's Order was affirmed.

In the matter of 770 Hagar Avenue, Burlington, Ontario
Appeal No. SW-0012-88, June 23rd, 1988

WHOLE BUILDING REVIEW APPEAL

Adding of all tenants to whole building review appeal; tenants association; tenants challenged business decision in replacing windows; changing standard of service and facilities and standard of maintenance and repair.

Appeal brought by a tenant as a member of tenants association. Board added all other tenants, to the appeal. The tenants challenged the landlord's decision to replace windows as it was perceived as not being entirely necessary. Board found that it had no authority to interfere with the landlord's discretion as to whether or not it should have undertaken a capital expenditure. The tenants raised a number of matters relating to a change in service and facilities and standard of maintenance and repair. The Board did not make an allowance to the extent that the changes claimed were outside of the time frame permitted by subsection 59(1) of O.Reg. 440/87 which refers to a period commencing with the beginning of the reference year up to the end of the time for submitting representations under section 74 of the **Act**. The Board also found that the tenants had not established a case concerning a change in standard of maintenance and repair.

The Minister's Order was affirmed.

In the matter of 2-69 Yonge Street, Harriston, Ontario
Appeal No. SW-0013-88, June 23, 1988

RENT REBATE

Giving of copy of application; amending title of proceedings

A landlord appealed, claiming that he had never received the inital application. No new evidence was submitted and the rental amounts charged to the prior and present tenants were not disputed. The Board found that the copy had been properly given when mailed to the same address where rental cheques are sent and to the attention of the same individual who the landlord had identified as his agent for collecting rent. The landlord filed articles of amendment indicating a corporate name change and this was reflected by amending the title of the proceedings.

The Minister's Order was affirmed.

In the matter of 14 Canterbury Drive, St. Catharines
Appeal No. SW-0128-88, June 24th, 1988

WHOLE BUILDING REVIEW APPEAL

Capital expenditures; equalization of rents

The tenant appealed a twelve percent increase in rent arguing it was excessive; that the capital expeditures allowed arose from a lack of maintenance; that the unit under appeal was charged a rent higher than an identical unit. Held by the Board that the two units were not identical and further that the capital expenditures arose as a result of ordinary deterioration and not lack of maintenance.

The Minister's Order was affirmed.

In the matter of 207 Wortley Road, London
Appeal No. SW-0110-88, June 24th, 1988

RENT REBATE APPEAL

Separate charge for additional parking

The one issue in dispute between the parties arose out of a statement in the Administrator's summary of reasons attached to the order which stated that as the landlord had not experienced any costs associated with providing a second parking spot to a tenant, that there was no provision in the regulations to arbitrarily set a separate charge. The 12 leased units included one parking spot and the landlord had fourteen spots, two of which had been for visitors. Held by the Board that section 97 of the Act allows a landlord to charge separately for a service of which this second parking spot was one and accordingly a separate charge was set at fair market value based on the evidence at the hearing.

The Minister's Order was amended and the Board substituted its own Order.

In the matter of 22 Bonfield Place, Kitchener
Appeal No. SW-0003-88, June 29th, 1988

WHOLE BUILDING REVIEW APPEAL

Application of financial loss carried over from previous order;

The landlord had received an order in March of 1985 in which an increase in rents was granted to the 10% requested. A portion of a financial loss was not applied as it was not necessary to use

all the financial loss in order to give the landlord the increase in rent requested. The Administrator's order stated that "the remaining portion may be considered on a subsequent application for rent review". A subsequent order in April of 1986 did not consider a financial loss as it was not necessary to granting the landlord the 10% requested. A third order in December of 1987 found the landlord to be in a positive financial position. Held by the Board that pursuant to section 37 of O.Reg.440/87 only a financial loss occurring in the base year shall be considered. A second issue raised by the landlord was whether he could set a new rent after residing in the premises for 12 months. Held by the Board that section 128 of the Residential Tenancies Act no longer applies and section 98 of the Residential Rent Regulation Act provides that the rent shall be calculated as if the unit had been rented. The order of the Minister was affirmed.

The Minister's Order was affirmed.

In the matter of 767 Second Street, Unit 1001, London
Appeal No. SW-0044-88, June 29th, 1988

RENT REBATE APPEAL

Effective Date of Increase: change

The landlord appealed, arguing that the Administrator's calculations were incorrect having been based on an anniversary date set out in a previous order, which the facts showed had been changed at some point in time. The evidence at the hearing established a change in the anniversary date in November of 1986 and calculations were done by the Board on the basis of the anniversary date in the previous order up to the date established by the evidence as being when the new anniversary date commenced. The order of the Minister was affirmed.

The Minister's Order was affirmed.

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In the matter of 89 Donald Street, Barrie
Appeal No. C-0030-88, May 30th, 1988

WHOLE BUILDING REVIEW APPEAL

Landlord's own labour and capital expenditures; use of companies by the landlord to provide services for the residential complex; non-arm's length transactions.

The landlords appealed from an Order of the Minister dated December 18, 1987.

The landlord had established companies to provide or lease

equipment and materials for use in the residential complex. These companies operated from the landlord's home and were controlled by the landlord. O.Reg. 93/87, clause 10(1) was considered in assessing what costs should properly be allowed in making findings for the landlord's capital expenditures and labour on the residential complex bearing in mind the non-arm's length nature of certain transactions. The landlord's own labour was also considered and O.Reg. 93/87 subsections 9(3), 9(4), 10(2) and 11(4) were considered. As a result, a number of specific costs were determined for items of labour and material.

The Minister's Order was set aside and the Board substituted its own Order after considering appropriate cost allowances.

In the matter of 838 Ivanhoe Avenue, Ottawa
Appeal No. E-0024-87, June 29th, 1988

RENT REBATE APPEAL

Evidence submitted in support of tenant's application; extension of time for filing submissions; amendment of title of proceedings; Residential Tenancies Commission mediated settlement; improper notice of increase - ruling on validity of notice of increase within context of section 95 application; calculation of excess rent to be repaid prior to August 1st, 1985.

The landlord appealed the Minister's Order arguing that the calculations were incorrect as they did not take into account the mediated settlement reached in August of 1984. The time was extended for filing material in support of the landlord's case as the Board felt it was relevant and that it was prepared to grant an adjournment if necessitated by the extension of time. The title of proceedings was amended pursuant to subsection 23(a) of the **Act** to reflect the landlords', personally, as they were not incorporated but rather carrying on business under a name and style not their own. The most recent notice of increase was disallowed as there was no evidence it was properly served. The landlord's recollection of placing it on the tenant's table is not sufficient evidence. Rent Review Services had declined to rule on the validity of the Notice of Rent Increase, arguing that the tenant's section 95 application permitted jurisdiction over rent increases in excess of that found under Part XI of the **Residential Tenancies Act** and that as the provisions pertaining to timing of a notice of rent increase are found in Part V of the **Residential Tenancies Act** and not part XI, the notice must be accepted as validly given. It was held by the Board, that the reference to Part XI must be interpreted in the context of the original legislation and any case law developed and that rent increases permitted under part XI of the **Residential Tenancies**

Act cannot be properly determined without regard to the provisions of Part V, specifically section 60. Furthermore, section 130 of Part XI specifically states that "nothing in this section relieves the landlord from compliance with section 60". In calculating excess rent repayable prior to August 1st, 1985, the intent of the section is that the Board declare owing, only that part of the excess rent charged which is greater than the deemed permitted rent for the period prior to August 1st, 1985.

The Minister's Order was varied and the Board substituted its own Order.

In the matter of Unit 201, 10 Beechwood Place, London
Appeal No. SW-0075-88, July 4th, 1988

RENT REBATE APPEAL

Whether tenant estopped from seeking excess rent based on written acknowledgment as to legality of rents being charged.

The landlord appealed the Order of the Minister arguing that when the premises were purchased by him in 1985, the tenant provided an acknowledgment stating that the landlord was the owner of certain personal property items in the unit and that the rents charged were not in excess of those permitted to be charged. The premises in question had been rented furnished from 1969 through to 1976 at which time the furniture was removed and the tenant requested a reduction in his rent. None was forthcoming. The landlord argued that the tenant was estopped from seeking the adjustment now based on the delay involved and on the signed acknowledgement. The Board held that the **Act** applies, notwithstanding any agreement or waiver to the contrary and further that the delay in seeking the rebate did not reflect on the merit of the tenant's application.

The Minister's Order was affirmed.

In the matter of Apartment 3, 2424 Howard Avenue, Windsor
Appeal No. SW-0163-88, July 5th, 1988

RENT REBATE APPEAL

Landlord used one Notice of Appeal form to appeal two separate Administrator's Orders respecting two different units; Board satisfied that no prejudice resulted and therefore proceeded; extension of time considered; common hearing to hear separate appeals; landlord claimed high increase in operating expenses; landlord claimed part liability of ex-wife; evidence filed by landlord at hearing; tenants given time period after hearing to

respond to evidence.

By using one Notice of Appeal form, the landlord appealed an Administrator's Order issued with respect to apartment No. 2 and another Administrator's Order issued with respect to apartment No. 3. The Board reviewed the appropriate procedure and considered submissions from the parties present. The Board was satisfied that no prejudice resulted to the two tenants as a result of the landlord's method of appealing the two Orders and therefore proceeded. The Board considered extension of time with respect to these matters and permitted the extension. The Board considered that as the issues of appeal were identical, that both matters could be heard together pursuant to subsection 101(6) of the **Act**. The landlord filed documents at the hearing which were not available in the file. The Board received these documents and permitted the tenants fixed time to respond after the hearing if they so wished. The landlord claimed additional operating costs as the basis for increasing the rent. The Board found that such costs could be claimed as part of a Whole Building Review application. The landlord had claimed in his Notice of Appeal limited liability to the extent of part ownership of the complex with his ex-wife. This issue was not put forward by the landlord on appeal.

The Minister's Orders were affirmed.

In the matter of Alexander Park Apartments, Windsor
Appeal No. SW-0036-88, July 5th, 1988

WHOLE BUILDING REVIEW APPEAL

Extension of time for giving of notice of appeal; addition of tenants as parties; "unnecessary" capital expenditures resulting in "unfair" increase; limiting issues on appeal.

Tenant appeal from Order resulting from Whole Building Review application. The Board extended the time for giving the Notice of Appeal, finding that the intervening holiday season may have caused the delay and that it would not be unfair to do so. One tenant had appealed. The Board added the other tenants as parties to the appeal as the outcome of the appeal could affect all the tenants. The landlord had argued against their being added stating that they had chosen not to appeal and that it would inhibit expediency. The parties, with the Board's consent, agreed to limit issues to the question of capital expenditures. The Board was satisfied that the capital expenditure work had been completed and that it met the criteria set out in the Act and Regulations.

The Minister's Order was affirmed.

In the matter of 87 Berczy Street, Barrie
Appeal No. C-0120-88, July 7th, 1988

RENT REBATE APPEAL

Whether two rent increases occurred during a twelve month period; deferred rent increase

The tenant appealed the Minister's Order on the basis that two rent increases had been charged within a twelve month period. The Board found that two increases had not occurred within 12 months in 1985 as the second increase had been deferred and a new increase date was established. However, the rent calculations did show a rebate owing with respect to other increases charged.

The Minister's Order was affirmed.

In the matter of 1414 South Service Road, Mississauga
Appeal No. C-0106-88, July 7th, 1988

RENT REBATE APPEAL

Documentary evidence; requirement for witness to give viva voce evidence; affidavit evidence.

The landlord appealed, raising objection to the evidence filed by the tenant which included a letter from the previous tenant and an affidavit from the previous landlord on the grounds that he could not cross-examine them without them being present. The landlord stated in evidence that upon purchasing the house, she had received a statement of adjustments from the lawyer showing a rent which was identical to that set out in the evidence of the tenant. On the basis of the evidence of both parties, the Board concluded that the calculations of the Minister were correct.

The Minister's Order was affirmed.

In the matter of 141 - 11th Street West, Owen Sound
Appeal No. SW-0022-87, July 11th, 1988

RENT REBATE APPEAL

Substantial compliance with Notice of Appeal form and extension

of time for service; application of subsection 2(1) Residential Rent Regulation Act, 1986; no waiver of rights.

On Appeal the landlord had argued that a confirmation of an illegal rent signed by the tenant would be legally binding such as to permit the rent to be charged. It was argued that the rent was a fair market rent. The tenant was found to retain his rights to rent review despite the confirmation because of subsection 2(1) of the **Act** which precluded any waiver of rights by the tenant.

The landlord had appealed by letter and had not served the tenant. However, the contents of the appeal came to the attention of the tenant and the letter was found to be in substantial compliance with formal requirements and the appeal proceeded.

The Minister's Order was affirmed.

In the matter of 1 - 1067 Hamilton Road, London
Appeal No. SW-0031-87, July 11th, 1988

RENT REBATE APPEAL

Tenants not present at hearing; Board proceeding in absence; landlords claimed tenant agreed to higher rent; landlords claimed capital expenditures authorized higher rent; landlords asked that Board freeze rebate order pending Small Claims Court matter; Board declining jurisdiction with respect to freeze.

Even though tenants were not present at hearing, the Board proceeded on the basis of evidence on file. The Board was able to make a finding as to the rent base, the maximum rent and the rebate payable. An agreement between a landlord and a tenant cannot allow for a higher than lawful rent. A landlord cannot justify a higher rent by claim of capital expenditures with respect to a rent rebate matter, but is able to claim such expenditures as part of a Whole Building Review application. The landlord requested that the Board freeze the rebate order pending Small Claims Court litigation. The Board stated that it had no jurisdiction to freeze the rebate order.

The Minister's Order was affirmed.

In the matter of 184 Bradford Street, Barrie
Appeal No. C-0068-88, July 12th, 1988

RENT REBATE APPEAL

Landlord had not received notice of the original application; agreement by tenant to pay higher rent; "reasonableness" of rent charged.

The tenant had given a copy of the original application as required by the **Act**. The landlord did not argue prejudice in not having received a copy. The taint had verbally agreed to a higher rent. Held by the Board that sections 2(1) and 6(2) of the **Act** provide that the Act applies despite any agreement or waiver to the contrary and that the payment of the higher than statutory increase is not a waiver by the tenant of their rights under the Act.

The Minister's Order was affirmed.

In the matter of Apartment 310, 563 Mornington Avenue, London
Appeal No. SW-0117-88, July 12th, 1988

RENT REBATE APPEAL

Purchaser landlord misled on legality of rents being charged; deferring of section 95 appeal pending determination of section 61(2), rent justification application.

The landlord appealed the Minister's Order arguing that he was not the landlord for the full period of time during which excess rent was paid, that the rents he charged were based on information received from the vendor landlord, and that he had brought a section 61(2) application to justify the rents charged and felt the appeal should be deferred pending the outcome of that application. There was no dispute on the amounts paid. Held by the Board that any misrepresentations that may have been made in undertakings between the vendor and purchaser in respect of the sale of the unit is a matter of contract law as between the landlords. Held further that the facts established that the landlord was the landlord during the period in question and further that nothing in the **Act** requires that an appeal be deferred pending an application by the landlord under subsection 61(2). Further the tenants can challenge the 61(2) application and attention will have to be paid to a Ministry Order made in 1976 setting out the maximum rent.

The Minister's Order was affirmed.

In the matter of Lot 24, Concession 14, R.R. #1, Coldwater
Appeal No. C-0092-88, July 14th, 1988

RENT REBATE APPEAL

Claim for set-off; burden of proof.

The tenant, although served with Notice of Appeal and Notice of Hearing, failed to attend the appeal hearing or provide any evidence. The landlord's evidence also showed accounts for which the tenant was responsible which more than offset any claim the tenant may have had.

In the circumstances the tenant's application was unsupported and was dismissed.

The Minister's Order was set aside and the Board substituted its own Order.

In the matter of Unit 1, 574 1/2 Adelaide Street North, London Appeal No. SW-0029-87, July 14th, 1988

RENT REBATE APPEAL

Agreement of tenant to pay higher rent.

The landlord appealed arguing that the tenants had agreed to the higher rent based on the prior landlord's committment to do remedial and renovation work, which commitment was honored by the present landlord. Held by the Board, that the **Act** applies notwithstanding any agreement to the contrary. The rebate amount was recalculated to conform with the evidence of payment submitted by the tenant and not disputed by the landlord.

The Minister's Order was varied.

In the matter of Apartment 1, 195 Carlton Street, Toronto Appeal No. C-0234-88, July 15th, 1988

RENT REBATE APPEAL

Addition and deletion of party; landlords claimed that previous tenant had lower rent because he was the superintendent and that the rental unit was commercial space and not subject to rent review; landlord claimed extensive renovations allowing higher rent.

Appeal had been erroneously brought in the name of an individual as opposed to the corporate legal entity controlled by the individual present. Board member added corporate entity and deleted individual as a party. The Board reviewed the affidavit

evidence of a previous owner concerning the purported superintendent duties of a previous tenant. Board found that activities referred to in the affidavit represented an as-needed arrangement as opposed to a formal arrangement and also found that there were no specific details of duties performed. The Board was not satisfied with the current landlord's representatives' ability to clarify this issue. The Board found that there was insufficient evidence upon which to make a finding that the previous rent was lower due to superintendent duties. The Board also found that extensive renovations would not permit higher rent in the circumstances. They could be considered through a whole or part building review application. The Board found that there was insufficient evidence to prove that the rental unit was commercial space. The Board concluded however that the basic unit rent included one parking space and the Minister's Order was varied accordingly.

The Minister's Order was varied.

In the matter of 493 Stone Street West, Oshawa
Appeal No. C-0091-88, July 15th, 1988

RENT REBATE APPEAL

Landlord not attending the hearing; landlord advising 45 minutes prior to hearing that she would not be attending due to illness; Board proceedings in absence; copy of Notice of Appeal not given by tenant to landlord; extension of time for giving of Notice of Appeal; consideration of definition of maximum rent.

Landlord was not present at the hearing. It was determined that the landlord had called approximately 45 minutes prior to the commencement of the hearing and stated that she would not attend as she was ill. The Board determined that it was an inappropriate short length of time to advise of non-attendance and proceeded ahead with the hearing rather than adjourning. It was determined that the tenants present had not been given a copy of a Notice of Appeal. An adjournment of 15 minutes was taken in order that the tenants might familiarize themselves with the contents. Upon hearing submissions, the Board decided to continue and hear the matter on its merits and, as a result, extended time for actual Notice of Hearing to the date of the appeal hearing. In the Notice of Appeal the landlord had stated that the tenant had used a storage building and a mobile 3-bedroom bus and that the original rent established was for the house only. The Board accepted the tenants' evidence that they were paying rent for a 3-bedroom house and did not make use of the storage shed or a mobile bus. Landlord made claim that mortgage payments were high enough to require charging higher rent. The Board noted that the proper way for the landlord to

proceed to have these costs recognized would be to bring a whole building review which would not, however, be retroactive. The Board reviewed the definition of maximum rent in detail.

The Minister's Order was set aside and the Board substituted its own Order.

In the matter of Apartment #2 - 186 Berkshire Drive, London
Appeal No. SW-0269-88, July 15th, 1988

RENT REBATE APPEAL

Tenant not present at hearing; Board proceeding in absence; tenant was required to pay $150.00 for painting; Board found such payment to fall within the definition of rent; increase taken within 12 month period.

Landlord was represented by agent. A letter was read from the tenant stating that she had a class at university and would be unable to attend. The tenant did not request an adjournment in the letter. The Board proceeded ahead with the hearing. The Board considered the $150.00 payment by the tenant for painting to fall within the definition of rent in section 1 of the **Act** and therefore should form part of the rebate. The Board made findings that the landlord had increased the rent within the 12 month period contrary to section 70.

The Minister's Order was affirmed.

In the matter of 2889C St. Clair Avenue East, Toronto
Appeal No. C-0245-88, July 19th, 1988

RENT REBATE APPEAL

Giving of notice of appeal; actual notice; landlord's ignorance of provisions of the Act;

The landlord appealed arguing that he was unaware of the rent review implications despite the fact that he had hired a lawyer when purchasing the property and that his conduct in charging the higher rent was without ill intent. The tenant stated that she had not received a copy of the Notice of Appeal but it was agreed by her agent that there was no prejudice to her and accordingly,

the time for giving a copy of the Notice was extended to the date actual notice was received. The evidence as to rent paid was not disputed. The Board found no reasons were given to vary the Minister's Order.

The Minister's Order was affirmed.

In the matter of 1558 - 1562 Trossacks Avenue, London
Appeal No. SW-0065-88, July 20th, 1988

WHOLE BUILDING REVIEW APPEAL

Extension of time; application for a Whole Building Review; Cost Revenue Statement not filed within time permitted by the Administrator; the Administrator dismissed the application; issue on appeal was whether the Board should extend time to permit landlord to file Cost Revenue Statement.

Landlord had brought retroactive Whole Building Review pursuant to clause 73(3)(b) of the **Act**. Dates were established by the Administrator for the landlord to file Cost Revenue Statement. Extension of original date permitted by Administrator. Subsequent request for extension not permitted by Administrator who eventually issued an Order dismissing the application. Landlord appealed Administrator's Order claiming that the Administrator acted unfairly in not extending time for a further period in order to allow the landlord to file the Cost Revenue Statement. Question raised was whether the Minister failed to properly take into account the reasons given by the landlord seeking a further extension of time. The Board reviewed in detail, with the landlord's agent, the reasons put forward why it was not possible to file the material on time. The Board noted that subsection 19(5), which allows for the extension of time, is discretionary and involves a test of fairness. The Board found that the landlord's agent present at the hearing did not have sufficient facts to respond to the Board's questions and failed to explain the reasons for delays during the time in question. The Board found that the landlord had not given an adequate explanation as to why they were unable to comply with the dates for filing as permitted by the Administrator.

The Minister's Order was affirmed.

In the matter of 2-611 Cheapside Street, London
Appeal No. SW-0076-88, July 20th, 1988

RENT REBATE APPEAL

Previous Order of the Residential Tenancies Commission; res judicata.

The landlords appealed arguing that they should be permitted to increment the last known rent by annual statutory guideline

amounts for the three years during which no increases had been taken. Held by the Board, that there was no jurisdiction for going behind the most recent Order of the Residential Tenancies Commission. The Board relied on the case of **Re Mascan Corp. and Ponzi et at** (1986), 56 O.R. (2d) 752 (Div. Ct.) and its conclusion that "it is a fundamental principal, that where any judicial tribunal having proper jurisdiction gives judgment then that judgement will be **res judicata** not only as to the point actually decided but also with respect to any other issues necessary to the decision." The Board recalculated excess rent amount due.

The Minister's Order was set aside and the Board substituted its own Order.

In the matter of rental unit situate on Part Lot 14, Concession 8, Plan 55, Lots 1 and 2 in the Township of Hungerford
Appeal No. E-0028-88, July 20th, 1988

RENT REBATE APPEAL

Failure to give notice of rent increase in writing; agreement by tenants to accept increase; ignorance of the statutory provisions on part of landlord; determination of maximum rent.

The landlord's agent argued that the landlord was unaware of the legal requirements for giving of notice and further that the tenants had accepted the rent increases. Held by the Board that ignorance of the statutory provisions does not excuse a lack of compliance and further, that the **Act** applies notwithstanding any agreement to the contrary. Increases paid without the proper notices are void. The maximum rent calculation was based on the landlord forgoing the earliest increase of 4% in favour of the subsequent permitted increase of 5.2% and the calculations done accordingly, so as to achieve the "maximum" rent.

The Minister's Order was affirmed. .

In the matter of Apartment 2, 318 Dolph Street, Cambridge,
Appeal No. SW-0023-88, July 21st, 1988

RENT REBATE APPEAL

Service of Notice of Appeal and Notice of Hearing at tenant's last known address; dismissal of tenant's application.

The landlord appealed the Order of the Minister dated December

23, 1987. The tenant left the rental unit leaving no forwarding address. The Board and the landlord served the tenant by mailing the hearing notice and Notice of Appeal to the tenant at his last known address. Service was found to be valid. However, the tenant did not appear, was not represented and was unable to discharge the onus of proof placed upon him by subsection 102(4) of the **Residential Rent Regulation Act, 1986**. Consequently, in accordance with subsection 111(c) of the **Act**, the Board set aside the Minister's Order and dismissed the original application.

The Minister's Order was set aside and the Board substituted its own order.

In the matter of Apartment 2, 129 Waverly Street, Ottawa
Appeal No. E-0207-88, July 21st, 1988

RENT REBATE APPEAL

Applications heard and considered together affecting the same rental unit; changes in tenants and landlords of the rental unit; calculation of maximum rent.

Three rebate applications were received. Two from joint tenants against two successive landlords. A third application was brought by the remaining tenant (after one tenant moved) against the third and current landlord. The applications were considered together initially but separate Orders were issued, only one of which was appealed. As a result an unappealed Order which set the maximum rent had to be accepted as a starting point upon which later rent determinations were based. In addition, a separate application was made with respect to parking charges. The parking area had been reduced and an allowance was therefore made to reduce rent by $25.00 per month in accordance with the provisions of section 97 of the **Act** and O.Reg. 93/87 clause 3(4)(d). As the Board's adjustment for reduced parking was not the same as that made by the Minister a new rebate and maximum rent resulted in the Board's Order.

The Minister's Order was set aside and the Board substituted its own Order.

In the matter of Lot 61, Plan 419, Cartwright's Point, Kingston
Appeal No. E-0066-88, July 21st, 1988

RENT REBATE APPEAL

Definition of "rental unit"; residential unit owned by tenant and

situated on leased land.

Landlord appealed Minister's Order arguing that the definition of "rental unit" as found in the definition section of the **Act**, does not apply to the present situation. The tenant purchased the home which was located on land leased from the owner of the land. The original lease on the property was for a term of years. It was renewed at a higher rent with an escalation clause tied into the cost of living. The Board, relying on E. A. Driedger's comments in his text, **Construction of Statutes**, 2nd Ed. (Toronto: Butterworths, 1983), held that the interpretation given to the definition of rental unit must be consistent with the aims of the **Act** and not such as would lead to an absurd result. Accordingly, the definition of "rental unit" should be read to include a site which is rented, and which is used for a residential purpose.

The Minister's Order was set aside and the Board substituted its own Order.

In the matter of 400 Vine Street, St. Catharines
Appeal No. SW-0113-88, July 21st, 1988

WHOLE BUILDING REVIEW APPEAL

Nature of hearing; limitation of issues on Whole Building Review; consideration of capital expenditure in Table 2; consideration of how rental units are affected by a capital expenditure.

Board stated that they would deal with all issues raised in the landlord's Whole Building Review application even though from the

Notice of Appeal it appeared that only two issues were being challenged. The Board made reference to the possibility of limiting issues in writing pursuant to subsection 102(2), but pointed out that not all tenants for the 87 units were present to accomplish this. The Board asked the parties present for a submission as to whether there were other issues other than the two set out on the Notice of Appeal which the parties wished to have considered. Both the landlord's representative and the tenants who were present stated that they had no evidence or arguments on other issues. The Board stated that they had done an exhaustive review on the Minister's Order and, other than the two issues raised, the Board was satisfied with the calculations and the resulting findings were correct and proper, and it was not necessary to adduce evidence on those issues. The capital expenditure claimed related to common area painting. Reference was made at the hearing to the Rent Review Operating Guide which interprets the word "affected" very narrowly such as to require that the capital expenditure relate directly to the unit.

Reference was made to **York et al.** v. **Cando Property Management Ltd. and 394537 Ontario Limited** (Ont. Co. Ct. November 16, 1984, unreported, affirmed on appeal by the Ontario Divisional Court September 10, 1986, unreported). Board found that the unit is affected by an expenditure if that unit derives a benefit directly or indirectly from the expenditure, therefore the expenditure was recognized.

The Minister's Order was affirmed.

In the matter of 32 Wenlock Crescent, London
Appeal No. SW-0197-88, July 22nd, 1988

RENT REBATE APPEAL

Improvements made to unit; lack of hearing at first level; agreement of tenant to pay higher rent.

The landlord appealed, arguing that he had not been afforded an opportunity to make submissions at the first level, that he had made improvements to the unit, that the rent had not been increased in three years and was at a chronically depressed level and that the tenant had signed a lease and agreed to pay the higher amount. Held by the Board that the hearing on appeal provided an opportunity to be heard, that the improvements to the unit were the subject matter of a separate application, that the chronically depressed rent provisions had not been enacted and that the **Act** applied notwithstanding the tenants signed agreement to the contrary.

The Minister's Order was affirmed.

In the matter of 206-1131 Royal York Road, London
Appeal No. SW-0195-88, July 25th, 1988

RENT REBATE APPEAL

Correctness of administrator's calculations; ignorance of the notice requirement provisions; tenant not present at Hearing.

The landlord appealed, arguing that the administrator's calculations were not correct and that he should not be punished now for something which occurred in the past and which he did not then know was wrong. The tenant was not present at the Hearing. The Board held that the only issue which could affect the rebate was the question of calculations made. The landlord's conduct

had altered the anniversary date and thereby affected the calculations of actual permitted rent.

The Minister's Order was affirmed.

In the matter of 1218 West Gore Street, Thunder Bay, Ontario Appeal No. N-0086-88, June 7, 1988

RENT REBATE APPEAL

Administrative review; notice from the Minister; natural justice; whether to dismiss Minister's Order; change in responsibility for water charges; rent increase notice provisions considered; consideration of real merits and justice of the case, section 49, RRRA

The landlord appealed the Minister's Order, claiming he had not received a notice of hearing nor the opportunity to give evidence to the Administrator and claimed a denial of natural justice. The Board Member explained that no hearing occurred before the Minister. The appeal would afford an opportunity to fully deal with all issues between the parties at a hearing; therefore no dismissal on those grounds was warranted.

A change in responsibility for water charges was considered. The tenancy agreement had originally required the landlord to pay for water charges. The tenant had received insufficient compensation so a $10.00 reduction to the base rent was made to adjust for water charged to the tenant. At the same time a change which had occurred in the effective date of rent increase from November 1, 1983 to January 1, 1984 was recognized. The increase date had been deferred by the landlord to compensate the tenant for the change in responsibility for water charges.

After these adjustments subsequent rent increases were calculated.

The Board Member then considered issues concerning notices of rent increase. He quoted the case of the **Mascan Corp. and Ponzi et al** (1986), 56 O.R. (2d) 751 and decided that the tenant should have made more timely objections. The notices of increase given for January 1, 1986 and for January 1, 1987 were found to be improper. The proper permitted rents were established. The maximum rent chargeable effective January 1, 1987 was set at $346.07.

The decision of the Board was based in part upon the real merits and justice of the case, as set out in section 49 of the **Residential Rent Regulation Act, 1986.**

The Minister's Order was set aside and the Board substituted its own Order.

In the matter of Mackenzie Manor, 25 Harris Street, Cambridge, Ontario, Appeal No. SW-0089-88, June 21, 1988

WHOLE BUILDING REVIEW APPEAL

Extension of time for filing cost revenue statement; retroactive whole building review application pursuant to clause 73(3)(b), RRRA; dismissal of application

The landlord appealed the Order of the Minister dismissing the landlord's application.

The Minister had issued a direction requiring the landlord to file a cost revenue statement after the extension of time period originally requested by the landlord had expired. The information requested was not forthcoming. The landlord claimed he had experienced difficulties in obtaining the required information which had not been properly taken into account. Several extensions of time had been granted but not taken advantage of without reasonable justification prior to the dismissal of the landlord's application. Any extension of time is discretionary and its fairness had to be considered. In the circumstances the landlord had designated an agent who had insufficient knowledge to explain its position and its failure to file to the Board. A year had gone by since the landlord's application was filed and tenants had not had any opportunity to consider or challenge the required information. The request for a further extension of time was refused.

The Minister's Order was affirmed.

In the matter of Apartment #4, 331 Mona Avenue, Vanier Appeal No. E-0156-88, June 21, 1988

RENT REBATE APPEAL

Renovations not so extensive as to create a new rental unit; collateral agreement to relieve the landlord from liability arising from rent overcharge; rebate not ordered

The landlord appealed from the Minister's Order which had required them to pay a rebate of $642 and declared the maximum rent to be $286 as of February 1, 1986.

The landlord argued that major renovations had occurred and that the tenants had signed an agreement not to "go to rent review." The renovations included new carpets, appliances, decoration, insulation and structural changes and repairs totalling $6,000 in

costs.

The Board declared the maximum rent to be $286. The excess rent was found to be $642. However, the Board stated that the agreement between the parties for early termination of the tenancy agreement was a collateral agreement the effect of which was to relieve the landlord of liability based upon the overcharge in rent which had occurred. The landlords had given up their right to damages arising from early termination and a rebate order would in effect pay the tenants twice. The agreement was found not to be one covered by subsection 2(1) of the **Residential Rent Regulation Act, 1986.** The agreement was considered to be a settlement of the rebate claim.

The Minister's Order was set aside and the Board substituted its own Order.

In the matter of 23, 25 and 27 Braidwood Avenue, Peterborough, Ontario, Appeal No. E-0082-88, June 22, 1988

WHOLE BUILDING REVIEW APPEAL

Amortization period on mortgage financing

The landlord appealed claiming that his mortgage costs of $8,400 per annum had not been properly allowed. He had been allowed only $7986.48 based on a 25-year amortization period. The Board concluded that a 20-year amortization as claimed by the landlord was appropriate but the $8400 allowance which would result would still leave the landlord with positive revenue. Without a financial loss the ordered rent would not be altered in any case.

The Order of the Minister was affirmed.

In the matter of Apartment #5, 1481 Morisset Avenue, Ottawa Appeal No. E-0037-88, June 24, 1988

RENT REBATE APPEAL

Board rehearing appeal, section 112 RRRA; Board rescinding and replacing its order; maximum rent declared not same as in rent registration statement

The landlord requested a rehearing on the grounds of serious error in the Board's Order of May 5, 1988. The landlord had filed a rent registry statement as required by part V of the **Act,**

but has not made this known to the Board at the time of the first appeal hearing. This was significant new evidence relating to the Board's original Order. Consequently, the appeal was reheard. On the rehearing the Board adopted the same findings of fact as were stated in its Reasons accompanying the Order of May 5, 1988.

Maximum rent calculations were set out, as were lawful rents. The excess rent found was recalculated for the period after August 1, 1985.

The maximum rent found differed from that filed in the rent registry although the registered amount remained subject to challenge.

The Order of the Minister was set aside and the May 5, 1988 Order of the Board was rescinded and replaced with a new Order of the Board.

In the matter of 465 Bolivar Street, Peterborough
Appeal No. E-0194-88, July 7, 1988

WHOLE BUILDING REVIEW APPEAL

Apportionment of heating costs; declaration of rental income by landlord

The tenant appealed from a Whole Building Review Order of the Minister on the grounds that the landlords were tenants of the lower unit of the complex and their costs should not have been considered with respect to the justified rent increase. In addition, rental income for the lower unit was not declared in the landlords' income tax return.

On considering the evidence submitted by the parties the Board determined that the landlords' income tax was not an issue of concern to the Board. The costs of the complex were reviewed. The Board concluded that the modernization of the heating system was appropriate and had been properly apportioned.

The Order of the Minister was affirmed.

In the matter of 41 Capulet Lane, London
Appeal No. SW-0296-88, July 11, 1988

RENT REBATE APPEAL

Exemption from the Residential Rent Regulation Act 1986; exemption for building used in whole or in part for non-residential purposes, clause 4(1)(i) RRRA; employment or services of occupant related to non-residential business in the building

The landlord appealed from the Order of the Minister on the grounds that the property was used by the tenant in running a business. A house on property containing a barn and riding stables was sublet. Part of the land was used for other business purposes without the owner's knowledge. The tenants used the leased land to operate a riding stable and were also using the rental unit for business purposes.

The Board decided that the evidence established an exemption of the rental unit from the **Act** in accordance with clause 4(1)(i).

The Minister's Order was set aside and the Board substituted its own Order.

In the matter of Apartment #1 and Apartment #2, 96 Church Street South, Richmond Hill
Appeal Nos. C-0251-88, C-0252-88, July 15, 1988

RENT REBATE APPEAL

Variation of Order; maximum rent calculation; evidence not relevant to rent rebate application

The landlord appealed the Order of the Minister. The landlord raised a number of grounds of appeal relating to the cost of the building, financing costs, capital expenditures and other costs which could not be taken into account in determining the matter of excess rent payments.

After consideration of the maximum rent determination the Order of the Minister, with respect to this item, was varied.

In the matter of 14 Meinzinger Avenue, Kitchener, Ontario
Appeal No. SW-0311-88, July 26, 1988

WHOLE BUILDING REVIEW APPEAL

Operating costs for the base year period; use of additional cost data

The landlord appealed the Minister's Order. All costs were reviewed but the basic issue concerned certain costs incurred by

the prior landlord which were disputed by the tenants. The former landlord was not available for cross-examination and not all the additional costs submitted were allowed. The maximum monthly rents were recalculated accordingly.

The Minister's Order was varied.

In the matter of 18 Fraserwood Avenue, North York
Appeal No. C-0303-88, July 27, 1988

WHOLE BUILDING REVIEW APPEAL

Dismissal of appeal for non-attendance; correction of clerical error

The landlord and certain tenants appealed the Order of the Minister. The landlord's appeal affected only the tenant of unit 3. The tenants of unit 2 also appealed on the ground of poor standard of maintenance and repair.

No tenant appellants appeared at the hearing. The tenants' appeal was dismissed.

The landlord's appeal concerned only a clerical error with respect to the establishment of the base rent of unit 3. The rent was established as $685. per month rather than $658. Other calculations were unaffected and it was unnecessary to consider the rents of other rental units. The error was corrected.

The Minister's Order was varied only with respect to the maximum monthly rent for Apartment 3.

In the matter of 312-314 Oxford Street, London
Appeal No. SW-0151-88, July 27, 1988

APPLICATION CLAIMING EXEMPTION

Landlord brought application seeking exemption pursuant to clause 4(1)(e) of the Act; landlord claimed that it operates a nursing home or therapeutic care facility and therefore is exempt from Rent Review

Landlord brought an application seeking exemption pursuant to clause 4(1)(e) of the **Act**. Minister denied the exemption. The residential premises in question are living units beside a licensed nursing home. The living units are of two types. Residential units are rented to seniors who require nursing and

medical care and there is a package of facilities that are available at varying prices. There are apartment units that are rented for seniors who do not require medical care on a regular basis. There are also separate charges available for services in the apartment units. One of the services available is a 24-hour pull-cord to provide nursing care. Evidence was given concerning the availability of nursing care. Reference was made to the definition of lodging house under the City of London municipal by-laws. Reference was also made to the **Nursing Home Act**. The Board found that 22% of the occupants were there for rehabilitative therapeutic purposes or for the purposes of receiving care, whereas 78% were not. The Board found that the fact that certain services are offered does not necessarily mean that they will be or are required and that the anticipation of needing such services is not a factor that could be considered. The Board made reference to section 49 of the **Act**. The Board recommended that the landlord set basic unit rents for all the units in the complex and submit those rents to Rent Review Services for approval. The various services provided would be left separate and charged separately and not subject to Rent Review.

The Minister's Order was affirmed.

In the matter of 295 Mackenzie Street, Sudbury
Appeal No. N-0204-88, July 27, 1988

RENT REBATE APPEAL

Request for hearing in French; landlord and tenant agreed to higher than guideline increase in rent; landlord undertook repair work; notices of rent increase found invalid

New landlord purchased building in June of 1986. Tenant had been paying $200 a month since 1983. Landlord increased rent to $300 as of July 1, 1986. Board found that that increase was invalid in that it did not comply with the notice of rent increase provisions in the **Residential Tenancies Act**. A second increase was sought January 1, 1987 to raise rent to $325. Board found that notice of rent increase provisions were not complied with and therefore increase was void. Landlord stated that tenant had agreed to higher rent for certain repair work undertaken. Board found that subsection 2(1) of the **Residential Tenancies Act** stated that the **Act** applied despite any agreement or waiver to the contrary. The Board pointed out that the landlord was free to bring an application for whole building review in order to have his costs recognized in future rents.

The Order of the Minister was set aside and the Board

substituted its own Order.

In the matter of 5-125 Twenty Second Street, Etobicoke
Appeal No. C-0297-88, July 28th, 1988

RENT REBATE APPEAL

Purchaser landlord argued that he was unaware of previous rent review order; request that new lease signed be considered valid notice of rent increase

The landlord appealed arguing that when he purchased he was unaware of the rent review order setting the rent for the premises. He argued that the lease signed should be considered a valid notice of rent increase such that the rent would be increased. Held by the Board that the lease did not comply with section 5 of the **Act** and was not a valid notice of rent increase.

The Minister's Order was affirmed.

In the matter of Lower Unit (First Floor), 6450 Taylor Street, Niagara Falls
Appeal No. SW-0159-88, July 28th, 1988

RENT REBATE APPEAL

Non-attendance of parties; proof of giving of Notice of Appeal Burden of Proof.

The landlord appealed the Minister's Order, arguing that she had incurred costs in cleaning and repairing after the departure of the tenant. The Board was satisfied on a balance of probabilities that actual notice of the appeal came to the attention of the tenant, whether verbally or by receiving a copy of the Notice of Appeal. The Board held that the hearing before the Board is one of original jurisdiction and that the burden of proof is with the tenant. The tenant was not present and the failure to meet the burden of proof resulted in a setting aside of the Minister's Order and a dismissal of the rebate application.

The Minister's Order was set aside and the application dismissed.

In the matter of 443 Hazel Street, Waterloo
Appeal No. SW-0034-8, July 28th, 1988

WHOLE BUILDING REVIEW APPEAL

Non-attendance of parties; request to file additional material; statutory increase added to registered rent; capital expenditures; landlord's own funds.

The Board added the statutory increase to the rents as shown on the Rent Registry and calculated a new gross potential rent. The Board then proceeded to consider the landlord's claim for capital expenditures, and granted the permissible costs as well as the management and administration allowance permitted. A Consulting Fee was granted as well as the Operating Cost Allowance which together with the treatment of capital expenditures, arrived at a total justified rent increase of 8.25%.

The Minister's Order was rescinded and the Board substituted its own Order.

In the matter of Apt. #6, 6555 Malden Road, Windsor, Ontario
Appeal No. SW-0124-88, July 28, 1988

RENT REBATE APPEAL

Retroactive application; notices of rent increase examined

The landlord appealed the Order of the Minister. The landlord raised a preliminary issue when he requested permission to file a retroactive whole building review application and requested an extension of time to file. The purpose was to establish rents which would affect the appeal now under consideration.

The Board Member advised that a whole building review application should be filed with the Rent Review Services Branch and that he could only deal with the appeal at the current hearing.

In reviewing the circumstances of rent payments, the Board verified the calculations of the Minister but found that the notices of rent increase dated November 5, 1984 effective February 1, 1985 did not provide 90 days notice of rent increase. The notice dated October 28, 1986 was also found to be invalid for the same reason. Accordingly, the rebate was recalculated and an additional $608.78 was awarded to the tenant.

The Minister's Order was set aside and the Board substituted its own Order.

In the matter of 36 Waniska Avenue, Etobicoke
Appeal No. C-0136-88, July 29th, 1988

WHOLE BUILDING REVIEW APPEAL

Minister's Order relying on Residential Tenancies Commission Order rather than the Appeal Order following

The Board set a new base rent for one of the units in the complex which resulted in different calculations for gross potential rent and financial position. Maximum rents were recalculated and a phase-in of financial loss applied to the rents. A correction was made to the unit designation of parking spaces provided.

The Minister's Order was varied.

In the matter of 3 - 14 Denbigh Crescent, Downsview
Appeal No. C-0206-88, July 29th, 1988

RENT REBATE APPEAL

Extension of time for giving notice; landlord disputing affidavit evidence filed re rents paid.

The landlord appealed arguing that the rents said to have been paid were inaccurate and that an extra $50.00 received was paid voluntarily by the tenants. The Board altered the basic unit rent to exclude an extra $15.00 which had been included in the total rent paid and which in fact related to extra parking. The anniversary date was altered to reflect the date given on the notice of increase.

The Minister's Order was varied.

In the matter of 645 Manning Avenue, Toronto
Appeal No. C-0192-88, July 29th, 1988

RENT REBATE APPEAL

Extension of time for giving Notice of Appeal; whether rent for previous tenants included value of services rendered

The landlord appealed arguing that the previous tenants had carried out extensive work in terms of painting and sanding floors, cleaning and fixing up the grounds. The tenants responded and the Board agreed, that there was no agreement to the effect that previous tenants were to provide services in lieu

of rent.

The Minister's Order was affirmed.

In the matter of Wilno Place Apartments, Apartment 204, 95 Windsor Drive, Brockville
Appeal No. E-0178-88, August 3, 1988

RENT REBATE APPEAL

Air conditioning charge, whether included in basic unit rent

The landlord appealed the Minister's Order on the sole ground that air conditioning should have been included in the basic unit rent. On the evidence, it appeared that air conditioning had been subject to a separate charge as early as 1984 and the Member decided that the separate charge established by the Minister was appropriate.

The Minister's Order was affirmed.

In the matter of Wilno Place Apartments, Apartments 302 and 406, 95 Windsor Drive, Brockville
Appeal Nos. E-0012-88 and E-0005-88

RENT REBATE APPEAL

Air conditioning charge, whether included in basic unit rent

The landlord appealed the Minister's Order on the sole ground that air conditioning should be included in the basic unit rent. On the evidence the rental units were found to be without air conditioning.

The Board felt the Minister's Order should not be disturbed.

The Minister's Order was affirmed.

In the matter of 308-28 Rockway Crescent, Ottawa
Appeal No. E-0102-88, August 4th, 1988

WHOLE BUILDING REVIEW APPEAL

Change in standard of maintenance and in services and facilities

The tenant appealed arguing that the laundry facilities, locker facilities and security of the building had deteriorated such that the rent increase sought was not justified. The Board held that subsection 94(5) of the **Act** and O.Reg. 93/87, subsections 51(1) and (2) apply and concluded that there was insufficient evidence to support the tenant's position.

The Minister's Order was affirmed.

In the matter of 5-323/325 Johnson Street, Kingston
Appeal No. E-0071-88, August 4th, 1988

RENT REBATE APPEAL

Extension of time for filing documents on appeal; addition of parties; whether rent of previous tenants included value of services rendered

The Board extended the time for filing of documents and added two tenants to the appeal who were shown as tenants on the lease. The landlord appealed arguing that the rent of the previous tenants was in fact higher than the monies paid by reason of services rendered which included the cutting of the lawn and keeping the hallways clean and tidy. An affidavit of a previous tenant confirmed that a lease had been signed providing that the rent of $750.00 would be reduced to $560.00 in consideration of the tenants keeping the premises clean but added that while tenants, none of them provided any services. Held by the Board that the oral and affidavit evidence established that there was never an expectation that the services would be performed and the rent therefore did not include the value of services to be rendered. The first effective date for the maximum rent was varied.

The Minister's Order was varied.

In the matter of 11 Valleyview Drive, Bancroft
Appeal No. E-0135-88, August 4, 1988

WHOLE BUILDING REVIEW APPLICATION

Landlord failed to attend hearing; successor landlord appeared; request for an adjournment by successor landlord; landlord had charged higher rent than order of administrator

Landlord brought whole building review application. Landlord appealed that Order but did not attend hearing. Successor landlord appeared at hearing and requested opportunity to contact previous landlord. Successor landlord asked for adjournment. Board found that request for adjournment was not made in good faith and that since an agency authorization had not been signed for the successor landlord, the request was procedurally incorrect. The request for an adjournment was refused. The Board also noted that the previous landlord had charged rents in excess of the amount ordered by the administrator.

The Minister's Order was affirmed.

In the matter of 120 Murray Drive, Aurora
Appeal No. C-0196-88, August 5, 1988

RENT REBATE APPEAL

Board found lesser rebate owing and as condition of Order, ordered tenants to refund money to the landlord; landlord increased the rent 3 months late and attempted to recover entire 12 months' increase over remaining 9 months

Landlord increased the rent 3 months late and attempted to collect the 12 months' increase over a 9-month period. Board disallowed it as it was an unlawful increase and the notice of rent increase was not valid. Board did allow increase when the new tenants took occupancy pursuant to subsection 5(3) of the **Act**. Evidence given that the rebate ordered by the administrator ($1200) was paid to tenants. Board found only $816 of excess rent owing. As a condition of the Order and pursuant to subsections 13(1), 34(1), and 49(1) of the **Act**, the Board as a condition ordered that the tenants repay the balance of $384 to the landlord. The Board also declared the maximum rent.

The Minister's Order was set aside and the Board substituted its own Order.

In the matter of #4, 579 Colborne Street, London
Appeal No. SW-0426-88, August 8, 1988

RENT REBATE APPEAL

Major renovations; creation of new rental unit; section 128, Residential Tenancies Act considered; Residential Tenancy Commission Guideline No. RR-9 "Re: Renting of Unoccupied and

Renovated Units" considered

The landlord appealed the Minister's Order on the grounds that major renovations in excess of $40,000 had been made without an increase in rent being permitted from August 1, 1985 to March 31, 1988, and objected to payment of a large rebate. In considering the evidence the Board concluded that section 128 of the **Residential Tenancies Act** was applicable and that a new rental unit had been created. The rent charged as of November 1, 1986 was allowed as the actual permitted rent. The amount of rebate owing was recalculated.

The Minister's Order was set aside and the Board's Order substituted its own Order.

In the matter of 83 Fifth Avenue, Ottawa
Appeal No. E-0014-88, August 9th, 1988

RENT REBATE APPEAL

Giving of Notice of Appeal; tenant having left the country

The landlord appealed and a pre-hearing conference was held. At no time did the landlord give a copy of the Notice of Appeal to the tenant as required by the **Act** nor did the landlord apply to the Board for directions as to giving of notice, in view of the fact that the tenant no longer resided in the country. Held by the Board, that the failure to give notice as required was fatal to the appeal. To proceed with the appeal would be a denial of natural justice to the party not given notice. The landlord did not wish to adjourn to attempt further service. The Board dismissed the Appeal, stating that it would not prevent the landlord from seeking to file another appeal in the event that the tenant is located.

The Appeal was dismissed.

In the matter of Apartment 1502, 235 Grand Ravine Drive, North York, Appeal No. C-0227-88, August 9, 1988

RENT REBATE APPEAL

Tenants agreed to pay rent not knowing unit subject to rent review; landlord undertook work to premises

Tenant moved into rental unit and agreed to pay $700 a month, not knowing that the unit was subject to rent review. Tenant had

agreed to monthly rent with the contents of a letter of understanding calling for them to move with 30 days notice. The landlord claimed certain expenses incurred for renovations to the unit, which the Board found not to be relevant for a rent rebate application. The Board found that subsection 2(1) of the **Act** states that the **Act** applies despite any agreement or waiver to the contrary and ordered to rebate.

The Minister's Order was affirmed.

In the matter of 101 Mary Street, Picton
Appeal No. E-0032-88, August 9th, 1988

WHOLE BUILDING REVIEW APPEAL

Tenant appeal on basis of inadequate maintenance and facilities. Board review of all calculations on whole building review. Notice of rent increase given to tenant requesting less than application for rent increase

Duplex building with one side rental and the other owner occupied. The tenant appealed the rent increase, arguing that the wiring and insulation and front door lock were inadequate as well as the parking provisions. The Board reviewed the concerns of the tenant and subsequently, reviewed the claims and supporting invoices of the landlord on expenses claimed. The Board calculated the relative benefit to each unit, taking into consideration the slightly larger property occupied by the landlord. Certain items were disallowed as capital expenditures on the basis that there are personal property and do not become an integral part of the property. The Board noted that a valid notice of rent increase requested 10% while the subsequent application for rent increase requested 33%. This latter document was not served outside the ninety day time limit for it to be a valid notice of rent increase. The landlord was bound by the 10% requested.

The Minister's Order was varied.

In the matter of 38 Nassau Street, Toronto
Appeal No. C-0228-88, August 10th, 1988

RENT REBATE APPEAL

Finding that actual notice of appeal received within time for giving notice; adding storage room to rental unit as justification for charging increased rent; separate charges under

section 97 of the Act

The landlord appealed arguing that the rent paid by the present tenant was higher because the basement area now formed part of the unit. The tenant responded that it was little more than a storage room. The Board reviewed the evidence and concluded that the increase in rent was invalid as it occurred within ten months of the last increase contrary to section 70 of the Act. Further, that the basement could be considered a facility for which a separate charge could be charged but that in the circumstances of this case, the tenancy agreement did not refer to it nor did the tenant agree to its addition whether by written amendment to the tenancy agreement or otherwise.

The Minister's Order was varied and the rebate period extended.

In the matter of 15 Erskine Avenue, Toronto
Appeal No. C-0083-88, August 15, 1988

WHOLE BUILDING REVIEW APPEAL

Change in the standard of maintenance and repair; reasonable value of change in maintenance; value of questionnaires; comments concerning remedial action

Forty tenants appealed a whole building review order of the Minister. The remaining tenants were added as parties by the Board. The grounds of appeal centred upon issues of repair and maintenance of the residential complex. The tenants filed a questionnaire and gave testimony relating to the conditions in the building.

The Board made a finding that the standard of maintenance and repair had deteriorated and reduced the total amount of the rent increase otherwise authorized by 5% ($36,104 less $1,805). The Board intended the reduction to represent a "reasonable value" attributed to change in maintenance that adversely affected the tenants' use of and benefit from common facilities areas and services that they are entitled to, under reasonable tenancy arrangements.

The questionnaire filed by the tenants was found to be of limited value, the decision being based primarily upon testimony received.

Other cost calculations were not altered from those found by the Minister.

The Minister's Order was set aside and the Board substituted its own Order.

In the matter of 101, 107, 108, 202, 203, 205, 206, 207, 303, 305 - 150 Chatham Street, Blenheim, Ontario
Appeal Nos. SW-0374-88, SW-0409-88, SW-0410-88, SW-0411-88, SW-0412-88, SW-0413-88, SW-0414-88, SW-0415-88, SW-0416-88, SW-0417-88, August 16, 1988

RENT REBATE APPEAL

Rental unit not occupied prior to January 1, 1976; date for rebate calculation; calculation of base rent; determination of actual rent

The landlord appealed from the Order of the Minister on the grounds that no notice of hearing had been received and the landlord had no opportunity to present his case. The landlord felt that his whole building review application should have been heard at the same time as the rebate application filed by this and other tenants of the residential complex. The landlord also claimed that the rental unit concerned had not been occupied as a rental unit prior to 1976 and that permitted rent calculations were in error as calculations had been made from February 1, 1976.

The appeal panel of the Board found that the rental unit had been exempt prior to August 1, 1985 because no rental unit had been occupied in the residential complex prior to January 1, 1976. The rent charged as of August 1, 1985 was found to be the base rent and the unit was subject to rent review from that date.

The permitted rent and maximum rent were recalculated for the period of the tenant's occupancy after August 1, 1985 until October 31, 1987, when a pending whole building review application had its first effective date.

Deductions from future rents to secure repayment of excess rent had been permitted by the Minister's Order. Therefore, adjustments were ordered between the landlord and tenant as required to ensure compliance with the Board's order.

The Minister's Order was set aside and replaced by the Order of the Board.

In the matter of 247 Brock Street, Stayner
Appeal No. C-0147-88, August 19, 1988

APPLICATION UNDER SUBSECTION 13(3) TO DETERMINE IF UNIT RENTED

FOR THE FIRST TIME

Landlord proposed to make available entrance panel to an attic and a trap-door to a crawlspace which he claimed would create a new unit by reason of section 99 of the Act

Landlord brought application under subsection 13(3) of the **Act.** Landlord stated that he should be able to set rents as units rented for the first time under section 99. Reference was made to clause 23(2)(c) of O. Reg. 440/87. Landlord contends that if he makes available a panel in order that the tenants may enter the attic, as well as a trap-door in order that the tenants may be able to reach a crawlspace, then the landlord will have created a new unit. Landlord intended to increase rent 23%. A number of tenants gave evidence concerning the fact that no one would use the attic or the storage space. The crawlspace was described as being four feet high with a dirt floor. The Board considered the definition of rental unit pursuant to section 1 of the **Act.** The Board also reviewed section 23 of O. Reg. 440/87. The Board found that the landlord's proposal with respect to the attic and crawlspace access did not constitute a renting for the first time within the meaning of section 99 of the **Act.**

The Minister's Order was affirmed.

In the matter of 12-616 Chaucer Avenue, Oshawa
Appeal No.C-0005-88, August 22nd, 1988

REBATE APPEAL

Adding of parties; common hearings; whether rent payments actually received and in what amounts

The landlord appealed, arguing that with respect to this unit, the rent payments claimed had not been received. The Board reviewed the evidence of the landlord and concluded that the tenants had been credited for more than was paid. As the tenants were not present to dispute the landlord's evidence, nor to provide further evidence to bring the claim more current, there was a finding by the Board of no excess rent owing. A common hearing was held as the same complex and same landlord were involved. The landlord was carrying on business under a different name and style and the title of proceedings was amended accordingly.

The Minister's Order was varied.

In the matter of 13-616 Chaucer Avenue, Oshawa
Appeal No. C-0006-88, August 22nd, 1988

REBATE APPEAL

Adding of parties; common hearings; whether rent payments actually received and in what amounts

The landlord appealed, arguing that he had not received the payments claimed. The calculations of the Board established that the rent actually paid did not exceed the permitted rent such that no excess rent was owing. For common hearing and adding of parties, refer to Unit 12 summary.

In the matter of 15B-616 Chaucer Avenue, Oshawa
Appeal No. C-0007-88, August 22nd, 1988

RENT REBATE APPEAL

Adding of parties; common hearings; whether rent payments actually received and in what amounts; whether rent consisting of monetary amount and superintendent duties; previous Residential Tenancies Commission Order reflecting only monetary amount

The landlord appealed, arguing that the rent for the unit was reduced because the tenant at the time was also the superintendent. The applicant tenant agreed with the landlord's evidence. The Board concluded on the evidence of both the landlord and the tenant, that the previous Residential Tenancies Commission Order reflected only the monetary portion of the rent and that the services performed were not considered. The Board held that the increase in rent to the present tenant was a reasonable amount given the superintendent duties carried out by the previous tenant. For common hearings and adding of parties see comments under unit 12.

The Minister's Order was varied.

In the matter of 14-616 Chaucer Avenue, Oshawa
Appeal No. C-0008-88, August 22nd, 1988

RENT REBATE APPEAL

Adding of parties; common hearings; new tenants in occupation who where not on the original lease.

The landlord appealed arguing that there was now a second tenant in the unit and that in the result the expenses were increased

and that there had not been an agreement to allow the extra tenant to reside there. The Board concluded that this was not a relevant consideration in the excess rent calculations. The Board did its own calculations and the Minister's Order was varied.

The Minister's Order was varied.

In the matter of Apartment #1, 441 Algonquin Street, North Bay
Appeal No. N-0172-88, August 22, 1988

RENT REBATE APPEAL

Tenant not present at hearing; Board proceeding in absence; separate charge for furniture

Even though the tenant was not present at the hearing, the Board proceeded on the basis of the evidence on file. The landlord gave evidence concerning a separate charge of $15 for furniture which had been requested by the tenant. The Board found that this charge fell within the definition of rent and had not been authorized under the **Act** or the **Residential Tenancies Act.** A rent rebate was ordered.

The Minister's Order was affirmed.

In the matter of Unit 2, 55 Beech Street, Brampton
Appeal No. C-0182-88, August 22, 1988

RENT REBATE APPEAL

Landlord contends that unit was first occupied on or after January 1, 1976 and that increases taken were therefore lawful; concern about appropriateness of notice of termination

Landlord asserted that unit was occupied first as a rental unit on or after January 1, 1976 and therefore increases taken in the period in question were lawful as the unit was not subject to rent review. Tenant produced evidence of previous tenant who lived in rental unit from 1974 to 1979. Board found that unit had been rented prior to January 1, 1976. The landlord raised the issue that notice of termination given by the tenant was defective. The Board indicated that this was a matter that falls under the **Landlord and Tenant Act** and that the Board had no jurisdiction to deal with it.

The Minister's Order was affirmed.

In the matter of 52 Guildwood Walk, London
Appeal No. SW-0456-88, August 23, 1988

RENT REBATE APPEAL

Agreement between landlord and tenant to pay higher rent; landlord's costs not considered in rent rebate; Board awarded rebate

Tenants moved into rental unit and agreed to pay a certain rent pursuant to a signed lease. Subsequently the tenants became aware of rent history and brought rent rebate application. Landlord claimed signed agreement indicated tenants' acceptance of higher amount. Landlord also claimed expenses incurred justified higher rent. The Board found that the **Act** applied despite any agreeement or waiver to the contrary pursuant to subsection 2(1). The Board also stated that the landlord's costs could justify a higher rent if a whole building review application were brought but these costs could not be considered in the context of a section 95 application.

The Minister's Order was affirmed.

In the matter of 73 Dingwall Parkway, Dryden
Appeal No. N-0119-88, August 23, 1988

RENT REBATE APPLICATION

Tenant had brought rent rebate application seeking recovery of last increase of $100; rent review administrator found that from a period of 1976 forward that increases had been agreed to informally between the landlord and the tenant and that the landlord had not given appropriate notice of rent increase; tenant indicated that they were not concerned with this prior period; administrator ordered rebate taking into account no written notices were given; Board allowed increases even though no notice was given; Board found that tenant should have disputed notice of increase on a timely basis; Board did not allow increases in 1985-86 based on defective notices

Tenant brought an application disputing last increase of $100. Upon review of the facts of the tenancy, the administrator determined that the parties had agreed to annual increases from 1976 forward without the landlord complying with the written notice of increase. Board found that prior to the enactment of

the Residential Rent Regulation Act, 1986 there was vagueness in the notice provisions. Board allowed increases despite no notice of rent increase. Board allowed deemed permitted rent determined for the purposes of subsection 95(3) to form the maximum rent base for August 1, 1985. The Board found that the tenant could have disputed the increases on a timely basis and as they had not, they could not do so now. The Board did not allow increases in 1985 or 1986 as no proper notice of rent increase had been given. The Board made reference to real merits and justice under section 49 of the **Act.** The Board stated that when there is a conflict between justice under section 49 and legislation, that justice will be the guide.

The Minister's Order was set aside and the Board substituted its own Order.

In the matter of Apartment #3, 993 Pierre Avenue, Windsor
Appeal No. SW-0340-88, August 25, 1988

RENT REBATE APPEAL

Change of rental unit by tenant; agreement for free rent in return for promise to vacate; notice of rent increase considered; excess amount paid to tenant to be repaid to landlord

The landlord appealed from the Order of the Minister claiming the administrator should have made a finding that the tenant did not pay June rent. Rent for April and May had been paid into Court. July and August rent was paid. Rent for September, October and November was not paid as part of an agreement that the tenant would vacate by December first in return for three months rent free status.

The Board confirmed that the administrator was correct in considering the agreement between landlord and tenant to be invalid because of subsection 2(1) and subsection 6(2) of the **RRRA.** The Board affirmed the administrator's finding of the actual permitted rent and found the notice of rent increase given when the tenant moved from Apartment #2 to Apartment #3 to be invalid. The Board recalculated the actual permitted rent and determined the excess rent owing. The maximum rent for Apartment #3 was also determined.

The landlord in paying a rebate to the tenant overpaid $246.30. The Board therefore ordered this amount to be paid back to the landlord as a term of its Order.

The Minister's Order was set aside and the Board substituted its own Order.

In the matter of 507 - 8 Park Vista Drive, Toronto
Appeal No. C-0384-88, August 26th, 1988

WHOLE BUILDING REVIEW APPEAL

Extension of time for giving of Notice of Appeal; capital expenditures disputed by tenant on basis of landlord's neglect in improving conditions of unit and driveway

The tenant appealing did not appear but the landlord, via its authorized agent did as well as a number of concerned tenants. The Board proceeded with the appeal. The landlord reviewed the capital expenditures claimed and approved by Rent Review Services.

The Minister's Order was affirmed.

In the matter of 2902 St. Clair Avenue East, Toronto, Ontario
Appeal No. C-0139-88, August 26, 1988

WHOLE BUILDING REVIEW APPEAL

Operating costs determination pursuant to section 77; allocation of capital expenditure; financial position calculation; claim for chronically depressed rents

Landlord claimed that administrator erred in using base year costs in order to update under the regulations. Landlord asserted the projected yearly costs of previous orders should be considered the base for determining annual increases. The Board determined that it was appropriate to use base year costs in the previous order for the purposes of updating. The landlord claimed a capital expenditure which would be a Table 2 capital expenditure. The administrator denied the capital expenditure to the extent that it was one affecting common areas and not a rental unit. The Ministry rent review operating guide indicates that a Table 2 capital expenditure requires that "affected" requires that it be with respect to a rental unit and not a common area. The Board disagreed with this approach and stated that it would be possible for common area work to affect a rental unit for the purposes of being a Table 2 capital expenditure. The landlord's claim for chronically depressed rent could not be considered as the section has yet to be proclaimed. The Board made a determination that despite a slight change in treatment of costs, there would be no effect on rents ordered by the Minister.

The Minister's Order was affirmed.

In the matter of Apartment 709, 131 Beecroft Avenue, North York Appeal No. C-0421-88, August 29, 1988

RENT REBATE APPEAL

Landlord appeal of rent rebate order; tenants did not appear at the hearing; Board proceeded in absence of tenants; landlord claimed that pursuant to tenants' representations and agreement that he extended their stay and delayed his sale of the complex; Board determined maximum rent, setting aside the agreed-to increase; Board refused to order repayment of excess rent by reason of tenants' conduct

Landlord appealed rebate order. Tenants did not appear at the hearing. Board decided to proceed in their absence. Landlord stated that the tenants wished to extend their stay in the rental unit as the condominium they had purchased was not ready for occupancy and they would have difficulty finding a short-term accommodation. Landlord also said that he had missed out on two opportunities to sell the condominium because it was occupied by the tenants. He stated that they sold it for $15,000 less than previous offer because of a decline in market during the 5-month extension of the tenancy. Tenants had agreed to a substantial increase in rent for a short period. The Board made a determination of maximum rent, not allowing the substantial increase in rent. The Board also denied recovery of excess rent paid, insofar as the tenants initiated the extension of the lease and fully agreed to their higher increase and, as a result, were estopped from recovering the excess rent.

The Minister's Order was set aside and substituted by the Board Order.

In the matter of basement apartment 101, Wharncliffe Road North, London, Appeal No. SW-0439-88, September 1, 1988

RENT REBATE APPEAL

Landlord raised concerns such as eviction, damages, disturbances, harassments, and breach of covenants under the lease; Board declined jurisdiction with respect to those issues as they fell under the provisions of the Landlord and Tenant Act

Landlord claimed tenant did not honour lease agreement that was signed. Not only did the tenant not undertake work agreed to under the lease, but also breached the lease by smoking and

owning pets. Landlord claimed damage to the property as well as disturbances and harassment. Landlord also claimed costs of eviction. The Board concluded that these were matters within the purview of the **Landlord and Tenant Act** and that the Hearings Board did not have jurisdiction to consider those matters.

The Minister's Order was affirmed.

In the matter of 15 Brookbanks Drive, North York
Appeal No. C-0108-88, September 1, 1988

APPEAL OF CONDITIONAL ORDER FOR CAPITAL EXPENDITURE

Landlord proposed capital expenditure and sought and received order under section 89 of the Act; a tenant appealed; tenant not appearing at hearing; Board finding no evidence to conduct appeal and dismissed

Landlord proposed to undertake significant work concerning outdoor parking. Landlord brought application under section 89 of the **Act** for a conditional order indicating how his expenditure would be treated. A tenant in the complex appealed this order. At initial hearing, tenant was represented by agent who had no direct evidence concerning tenant's position. The hearing was adjourned and then reconvened. At the reconvened hearing, no one attended on behalf of the tenant. The Board found that no evidence was presented to the Board and therefore the Board lacked jurisdiction to hold the hearing. The Board ordered that the appeal be dismissed.

Appeal dismissed.

In the matter of 1917 St. Laurent Boulevard, Ottawa
Appeal No. E-0015-88, September 1, 1988

WHOLE BUILDING REVIEW APPLICATION

Landlord appeal of whole building review application; review of current maximum rent per unit; review of parking as a separate charge; review of financing costs; direction to file further evidence; review of changes, standard of maintenance and repair

Landlord brought application for whole building review and received an Order of the Administrator. Landlord appealed Order of the Administrator. Board reviewed in detail the current maximum rents and made findings with respect to specific units in detail and the whole complex in general. The Board reviewed the financing costs for the complex, taking into account that the

regulations provide that financing be calculated on the basis of equal blended payments of principle and interest. Board made findings with respect to operating costs filed pursuant to a claim for financial loss. Board issued directions for further invoices. Board considered issue of change in standard of maintenance and repair and found that although the standard may be poor there appeared to be no change.

The Minister's Order was set aside and the Board substituted its own Order.

In the matter of 201-11 Pinhey Street, Ottawa
Appeal No. E-0260-88, September 1, 1988

RENT REBATE APPEAL

Tenant did not attend hearing; landlord did not give copy of notice of appeal; Board found that tenant had actual notice; Board proceeded with documentary evidence in absence of tenant; landlord claimed discounted rent to previous tenant; landlord also claimed equalization of rents; Board found no evidence to substantiate a discount

Landlord appealed the rent rebate application. Tenant did not attend the hearing but had sent letter to the Board indicating inability to attend. In his letter, the tenant requested that the Board consider the materials on file. Board decided to proceed in absence of tenant and consider documentary evidence on file. Landlord indicated that he had not given a copy of the notice of appeal, however, the Board found that the tenant had actual notice within the time frame contemplated by the **Act**. The landlord did not dispute the documentary evidence on file by the tenant. The landlord did assert that the previous tenant had discounted rent due to maintenance work undertaken. The landlord was given an opportunity to file evidence after the hearings to support this contention. The landlord indicated in the subsequently filed letter that no further evidence was offered on this point. The Board found that there was no evidence to support a discounted rent. The landlord also made a claim for equalization of the rents throughout the building. The Board explained that this was not possible in the context of a section 95 application.

The Order of the Minister was affirmed.

In the matter of 93, 95, 97 and 99 English Street, Strathroy
Appeal No. SW-0168-88, September 2, 1988

WHOLE BUILDING REVIEW APPEAL

Landlord wished to introduce new evidence on appeal concerning costs claimed in cost revenue statement; landlord contended that clause 29(5)(a) of O. Reg. 440/87 does not apply to current owner

On appeal, landlord sought to introduce new evidence with respect to claimed capital expenditure. The Board considered this evidence. The Board determined life expectancy for landscaping to be 7 years. Board allowed landlord's labour of 100 hours at $14 an hour. Landlord claimed that clause 29(5)(a) of O. Reg. 440/87 did not apply as original inception date of mortgage was 1975, prior to his ownership. The Board did not accept the landlord's interpretation of clause 29(5)(a) and applied the cost treatment set out.

The Minister's Order was varied.

In the matter of 103-6355 Edgar Street, Windsor
Appeal No. SW-0301-88, September 2, 1988

WHOLE BUILDING REVIEW APPEAL

Tenant appealing whole building review order; tenant appealing over assessment of parking charge; Board found that unit rent included one parking space but additional space had to be paid for

Tenant appealed whole building review order on the basis of assessed parking charges. Tenant claimed that original leasing arrangements provided that two cars could be parked at no additional charge to the basic unit rent. Evidence and documentation was reviewed concerning the tenancy in question. The Board concluded that the basic unit rent included one parking charge and that the tenant had to pay for a separate parking space.

The Minister's Order was set aside and the Board substituted its own Order.

In the matter of Apartment #2, 78 Cambridge Street, Ottawa
Appeal No. E-0155-88, September 12, 1988

RENT REBATE APPEAL

Landlord's apportioning utility cost to tenant on monthly basis; landlord claims should not be prejudiced by unlawful increases

taken by previous landlord; landlord claims tenants should not be allowed to challenge rent when they made representations to current landlord at time of purchase; landlord claims expenses would justify higher rent; Board denies these claims and establishes maximum rent conditional on when increases actually taken

Landlord charged utility proportionally to tenant. The Board found that if in doing so it created an increase greater than that set by the guideline, such an arrangement had to be authorized by the Residential Tenancy Commission (at the time). Landlord claimed that landlord should not be bound by previous unlawful increases taken by previous owner. Board denied this claim in establishing maximum rent. Landlord claimed that tenants represented that the rent was correct at the time of acquisition and therefore should not be allowed to collect rebate. Board found that the rent review legislation is in effect not only to protect current tenants but also to protect future tenants. The Board did not consider the landlord's claim for expenses, nor did it permit a deferment in order to allow the landlord to attempt to bring a retroactive whole building review application to justify these expenses. The Board ordered a maximum rent which was conditional dependent on the timing of increases taken by the landlord.

The Minister's Order was set aside and the Board substituted its own Order.